

2001 IOWA CODE SUPPLEMENT

Containing

Sections of the Laws of Iowa
of a General and Permanent Nature
Enacted, Amended, Repealed or
otherwise affected by the
2001 Regular and Extraordinary Sessions
of the

GENERAL ASSEMBLY OF THE
STATE OF IOWA



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by the
Legislative Service Bureau
GENERAL ASSEMBLY OF IOWA
Des Moines
2001



PREFACE TO 2001 IOWA CODE SUPPLEMENT

This 2001 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 It shows sections of the laws of Iowa enacted, amended, repealed, or otherwise affected by the 2001 regular and extraordinary sessions of the 2001 Iowa General Assembly or by an earlier session if the effective date was deferred, arranged in the numerical sequence followed by the 2001 Iowa Code. However, it does not show temporary sections, such as appropriation sections, which are not to be codified.

ADDENDUM. The occurrence of the Second Extraordinary Session on November 8, 2001, late in the Code Supplement publication process, necessitated the printing of some Code chapters and sections in an Addendum at the back of the volume. Readers will find references to chapters and sections printed in the Addendum at their proper numerical sequence in the main body of the book.

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, 2001. See the 2001 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 2001 Code. A footnote may follow the source note or repeal. 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 2001 Code are not included but will be corrected as necessary and appear in the 2003 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 2001 Code governs the ongoing revision of gender references, authorizes other editorial changes, and provides for the effective date of editorial changes.

INDEX AND TABLES. A subject matter index to new or amended sections, a table of the disposition of the 2001 Acts and any previous years' Acts codified in this Supplement, and a table of corresponding sections from the 2001 Code to the 2001 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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IOWA CODE SUPPLEMENT

2001

CHAPTER 2

GENERAL ASSEMBLY

Printed in Addendum

CHAPTER 6B

PROCEDURE UNDER EMINENT DOMAIN

6B.35 Sheriff to file record.

Thirty days after the date of mailing the notice of appraisal of damages, the sheriff shall file with the county recorder of the county in which the condemned land is situated, the following papers:

1. A certified copy of the application for condemnation.
2. All notices, together with all returns of service endorsed on the returns or attached to the returns.
3. The report of the commissioners.

4. All other papers filed with the sheriff in the proceedings.

5. A written statement by the sheriff of all money received in payment of damages, from whom received, to whom paid, and the amount paid to each claimant and reference to the application for condemnation by document reference or instrument number and the date the application was filed with the county recorder.

2001 Acts, ch 44, §1
Subsection 5 amended

CHAPTER 7

GOVERNOR AND LIEUTENANT GOVERNOR

7.18 Model community projects.

1. As used in this section, unless the context otherwise suggests, “community” means a city, county, or any combination of cities and counties.

2. During any project, pilot project, or similar initiative undertaken by the governor or the executive branch which includes the designation of a model community in the state, the approval of all of the following entities must be obtained by a simple majority vote prior to the granting of an official model community designation and prior to

any state financial support being disbursed to any person under the project, pilot project, or similar initiative:

- a. The city council of any city included in a proposed model community.
- b. The county board of supervisors of a county included in a proposed model community.
- c. Each school board of a school district serving students in a proposed model community.

2001 Acts, ch 40, §1
NEW section

CHAPTER 7A

OFFICIAL REPORTS AND PUBLICATIONS

7A.3 Biennial reports — time covered and date of filing.

Reports of the following officials and departments shall cover the biennial period ending June 30 in each even-numbered year, and shall be filed as soon as practicable after the end of the reporting period:

1. Director of revenue and finance on fiscal condition of state.
2. Treasurer of state as to the condition of the treasury.
3. Director of the department of education.
4. Director of the department of human services.
5. Board of regents.
6. State printing administrator.
7. State historical society board of trustees.
8. State librarian.
9. Commission of libraries.
10. Department of general services.
11. Director of department of natural resources.
12. Adjutant general.

The officials and departments required by this section to file biennial reports shall, in addition thereto, in each odd-numbered year, file summary reports relating to their operations for the preceding fiscal year. Such reports shall be filed as soon as practicable after June 30 of each odd-numbered

year and shall be as detailed as may be required by the governor, or in case the reports are to be filed with the general assembly, the presiding officers of the two houses of the general assembly.

The officials and departments required by this section to file reports shall submit the reports on standardized forms furnished by the director of the department of management. All officials and agencies submitting reports shall consult with the director of the department of management and shall devise standardized report forms for submission to the governor and members of the general assembly.

2001 Acts, ch 129, §1
Subsection 3 stricken and former subsections 4 – 13 renumbered as 3 – 12

7A.20 Miscellaneous documents.

There shall be published, printed, and bound, uniform with the official reports, unless otherwise provided, and for the periods indicated, the following miscellaneous documents, each of which shall be compiled by the head or secretary of the department or association having charge thereof:

1. Iowa book of agriculture, biennially.
2. Iowa official register, biennially.
3. Assessments by department of revenue and finance relative to public utilities, annually.

Publication requirement inapplicable to Iowa official register during 2001 and 2002 calendar years; 2001 Acts, ch 187, §25
Section not amended; footnote added

CHAPTER 7B

JOB TRAINING PARTNERSHIP PROGRAM

Repealed by 2001 Acts, ch 61, §18

CHAPTER 7E

EXECUTIVE BRANCH ORGANIZATION AND RESPONSIBILITIES

7E.5A Buildings and infrastructure — funding.

1. For each new vertical infrastructure project, the department in control of the vertical infrastructure shall identify and recommend to the general assembly funding sufficient to meet the projected maintenance, repair, and replacement needs of the vertical infrastructure.

2. A department shall, within its five-year capital budget request, identify specific instances where the failure to address deferred maintenance has had a negative impact on the department's ability to implement its mission and the

proposed costs for annual routine and preventive maintenance based on an industry standard of one percent of the estimated replacement cost of the department's facilities. This subsection shall not apply to the state department of transportation.

3. A department requesting state moneys for a vertical infrastructure project shall actively pursue any federal funds for which the proposed project may be eligible and shall demonstrate such pursuit prior to receiving state moneys for the project. The department shall report the receipt of any such federal funds to the department of management and the legislative fiscal bureau in

the manner described in section 8.23.

4. As used in this section, “*vertical infrastructure*” means the same as defined in section 8.57,

subsection 5, paragraph “c”.

2001 Acts, ch 185, §32
Section amended

CHAPTER 8

DEPARTMENT OF MANAGEMENT — BUDGET AND FINANCIAL CONTROL ACT

8.5, 8.6, and 8.21 Printed in Addendum.

8.22 Nature and contents of budget.

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

PART I

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

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

The governor’s program shall include a single budget request for all capital projects proposed by the governor. The request shall include but is not limited to the following:

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

2. Financial statements giving in summary form:

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

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

c. A summary of appropriations recommended

for the following fiscal year for each department and establishment and for the government as a whole, in comparison with the actual expenditures for the last completed fiscal year and the estimated expenditures for the year in progress.

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

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

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

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

of the surplus to the reduction of debt or otherwise, to the reduction in taxation, or to such other action as in the governor's opinion is in the interest of the public welfare.

PART II

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

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

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

PART III

Appropriation bills. Part III shall include a draft or drafts of appropriation bills having for their purpose to give legal sanction to the appropriations recommended to be made in Parts I and II. The appropriation bills shall indicate the funds, general or special, from which the appropriations shall be paid, but the appropriations need not be in greater detail than to indicate the total appropriation to be made for:

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

PART IV

Strategic plan. Part IV shall include an explanation that correlates the budget with the enterprise strategic plan adopted pursuant to section 8E.204. The budget shall provide an explanation of appropriations recommended for the administration and maintenance of an agency as defined in section 8E.103 with the general eval-

uation of the agency in meeting enterprise strategic goals, including identifying goals that require legislation.

2001 Acts, ch 169, §1, 2
Unnumbered paragraph 1 amended
NEW Part IV

8.22A Printed in Addendum.

8.23 Annual departmental estimates.

1. 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.

a. 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.

b. 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.

c. The budget estimates for an agency as defined in section 8E.103 shall be based on achieving goals contained in the enterprise strategic plan and the agency's strategic plan as provided for in chapter 8E. The estimates shall be accompanied by a description of the measurable and other results to be achieved by the agency. Performance measures shall be based on the goals developed pursuant to sections 8E.205, 8E.206, and 8E.208. The estimates shall be accompanied by an explanation of the manner in which appropriations requested for the administration and maintenance of the agency meet goals contained in the enterprise strategic plan and the agency's strategic plan, including identifying goals that require legislation.

d. 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 gover-

nor shall cause estimates to be prepared for that department or establishment as in the governor's opinion are reasonable and proper.

e. The director shall furnish standard budget request forms to each department or agency of state government.

2. On or before November 15 all departments and establishments of government and the judicial branch 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.

2001 Acts, ch 169, §3
Unnumbered paragraph 1 amended and redesignated as subsection 1 and paragraphs a – e
Unnumbered paragraph 2 redesignated as subsection 2

8.24 Annual estimate of income. Repealed by 2001 Acts, 2nd Ex, ch 2, § 12, 13.

Repeal is effective November 16, 2001; 2001 Acts, 2nd Ex, ch 2, §13

8.25 and 8.29 Printed in Addendum.

8.35A Information to be given to legislative fiscal bureau.

1. By July 1, the director of the department of management, in conjunction with the director of revenue and finance, 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, in conjunction with the director of revenue and finance, 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, in conjunction with the director of revenue and finance, 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.

5. The department shall transmit the enterprise strategic plan and related information and an agency shall transmit its agency strategic plan, performance report, and related information as required by chapter 8E to the legislative fiscal bureau.

2001 Acts, ch 169, §4; 2001 Acts, 2nd Ex, ch 2, §8, 13
2001 amendment to subsection 1 takes effect November 16, 2001, and first applies to the budget and appropriations made for the fiscal year beginning July 1, 2002, and ending June 30, 2003; 2001 Acts, 2nd Ex, ch 2, §13
Subsection 1 amended
NEW subsection 5

8.37 Fiscal term. Repealed by 2001 Acts, 2nd Ex, ch 2, § 12, 13.

Repeal is effective November 16, 2001; 2001 Acts, 2nd Ex, ch 2, §13

8.39A Transfer of moneys or positions — changes in tables of organization — notification. Repealed by 2001 Acts, 2nd Ex, ch 2, § 12, 13.

Repeal is effective November 16, 2001; 2001 Acts, 2nd Ex, ch 2, §13

8.42 Payroll accrual account. Repealed by 2001 Acts, 2nd Ex, ch 2, § 12, 13.

Repeal is effective November 16, 2001; 2001 Acts, 2nd Ex, ch 2, §13

8.47 Service contracts.

1. The department of general services, in cooperation with the office of attorney general, the department of management, the department of personnel, and the department of revenue and finance, shall adopt uniform terms and conditions for service contracts executed by a department or establishment benefiting from service contracts.

The terms and conditions shall include but are not limited to all of the following:

a. The amount or basis for paying consideration to the party based on the party's performance under the service contract.

b. Methods to effectively oversee the party's compliance with the service contract by the department or establishment receiving the services during performance, including the delivery of invoices itemizing work performed under the service contract prior to payment.

c. Methods to effectively review performance of a service contract, including but not limited to performance measurements developed pursuant to chapter 8E.

2. Departments or establishments, with the approval of the department of management acting in cooperation with the office of attorney general, the department of general services, the department of personnel, and the department of revenue and finance, may adopt special terms and conditions for use by the departments or establishments in their service contracts.

3. The state board of regents shall establish terms and conditions for service contracts executed by institutions governed by the state board of regents.

2001 Acts, ch 169, §5
NEW section

8.48 through 8.50 Reserved.

8.52 Planning responsibility.

The department of management shall:

1. Provide coordination of state planning, performance measurement, and management of interagency programs of the state, and recommend policies to the governor and the general assembly.

2. Maintain and make available demographic and other information useful for state and local planning.

3. Prepare and submit economic reports appraising the economic condition, growth, and development of the state.

4. Analyze the quality and quantity of services required for the orderly growth of the state, taking into consideration the relationship of activities, capabilities, and future plans of private enterprise, the local, state, and federal governments, and regional units established under state or federal legislation, and shall make recommendations to the governor and the general assembly for the establishment and improvement of such services.

5. Inquire into methods of planning, performance measurement, and program development and the conduct of affairs of state government; prescribe adequate systems of records for planning, performance measurement, and programming; establish standards for effective planning, performance measurement, and programming in

consultation with affected state agencies; and exercise all other powers necessary in discharging the powers and duties of this chapter.

6. Administer the accountable government Act as provided in chapter 8E.

2001 Acts, ch 169, §6, 7
Subsections 1 and 5 amended
NEW subsection 6

8.53 through 8.56 Printed in Addendum.

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 estab-

lished 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 vertical infrastructure projects. For the purposes of this subsection, "vertical infrastructure" includes only land acquisition and construction, major renovation and major repair of buildings, all appurtenant structures, utilities, site development, and recreational trails. "Vertical infrastructure" does not include routine, recurring maintenance or operational expenses or leasing of a building, appurtenant structure, or utility without a lease-purchase agreement. However, appropriations may be made for the fiscal years beginning July 1, 1997, and July 1, 1998, for the purpose of funding the completion of Part III of the Iowa communications network.

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.

e. Notwithstanding provisions to the contrary in sections 99D.17 and 99F.11, for the fiscal year beginning July 1, 2000, and for each fiscal year thereafter, not more than a total of sixty million dollars shall be deposited in the general fund of the state in any fiscal year pursuant to sections 99D.17 and 99F.11. The next fifteen million dollars of the moneys directed to be deposited in the general fund of the state in a fiscal year pursuant to sections 99D.17 and 99F.11 shall be deposited in the vision Iowa fund created in section 12.72 for the fiscal year beginning July 1, 2000, and for each fiscal year through the fiscal year beginning July 1, 2019. The next five million dollars of the moneys directed to be deposited in the general fund of the state in a fiscal year pursuant to sections 99D.17 and 99F.11 shall be deposited in the school infrastructure fund created in section 12.82 for the fiscal year beginning July 1, 2000, and for each fis-

cal year thereafter until the principal and interest on all bonds issued by the treasurer of state pursuant to section 12.81 are paid, as determined by the treasurer of state. The total moneys in excess of the moneys deposited in the general fund of the state, the vision Iowa fund, and the school infrastructure fund in a fiscal year shall be deposited in the rebuild Iowa infrastructure fund and shall be used as provided in this section, notwithstanding section 8.60.

If the total amount of moneys directed to be deposited in the general fund of the state under sections 99D.17 and 99F.11 in a fiscal year is less than the total amount of moneys directed to be deposited in the vision Iowa fund and the school infrastructure fund in the fiscal year pursuant to this paragraph “e”, the difference shall be paid from lottery revenues in the manner provided in section 99E.10, subsection 3.

2001 Acts, ch 185, §33, 49
Subsection 5, paragraph e, NEW unnumbered paragraph 2

CHAPTER 8A

IOWA COUNCIL ON HUMAN INVESTMENT

Repealed by 2000 Acts, ch 1231, §39; 2001 Acts, ch 24, §72, 74

CHAPTER 8D

IOWA COMMUNICATIONS NETWORK

Review of operations of Iowa communications network
and information technology department;
2000 Acts, ch 1141, §17, 19

8D.2 Definitions.

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

1. “*Commission*” means the Iowa telecommunications and technology commission established in section 8D.3.
2. “*Director*” means the executive director appointed pursuant to section 8D.4.
3. “*Network*” means the Iowa or state communications network.
4. “*Private agency*” means an accredited nonpublic school, a nonprofit institution of higher education eligible for tuition grants, or a hospital licensed pursuant to chapter 135B or a physician clinic to the extent provided in section 8D.13, subsection 16.
5. “*Public agency*” means a state agency, an institution under the control of the board of regents, the judicial branch as provided in section 8D.13, subsection 17, a school corporation, a city library, a library service area as provided in chapter 256, a county library as provided in chapter 336, or a judicial district department of correctional services established in section 905.2, to the extent provided in section 8D.13, subsection 15, an agency of the federal government, or a United States post office which receives a federal grant for pilot and demonstration projects.
6. “*State communications*” refers to the transmission of voice, data, video, the written word or other visual signals by electronic means but does not include radio and television facilities and oth-

er educational telecommunications systems and services including narrowcast and broadcast systems under the public broadcasting division of the department of education, department of transportation distributed data processing and mobile radio network, or law enforcement communications systems.

2001 Acts, ch 158, §1
Subsection 5 amended

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

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

2. a. A private or public agency which certifies

to the commission pursuant to subsection 1 that the agency is a part of or intends to become a part of the network shall use the network for all video, data, and voice requirements of the agency unless the private or public agency petitions the commission for a waiver and one of the following applies:

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

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

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

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

2001 Acts, ch 158, §2
Subsection 1 amended

8D.11 Powers — facilities — leases.

1. The commission may purchase, lease, and improve property, equipment, and services for telecommunications for public and private agencies and may dispose of property and equipment when not necessary for its purposes. However, the commission shall not enter into a contract for the purchase, lease, or improvement of property, equipment, or services for telecommunications pursuant to this subsection in an amount greater than one million dollars without prior authorization by a constitutional majority of each house of the general assembly, or approval by the legislative council if the general assembly is not in session. The commission shall not issue any bonding

or other long-term financing arrangements as defined in section 12.30, subsection 1, paragraph “b”. Real or personal property to be purchased by the commission through the use of a financing agreement shall be done in accordance with the provisions of section 12.28, provided, however, that the commission shall not purchase property, equipment, or services for telecommunications pursuant to this subsection in an amount greater than one million dollars without prior authorization by a constitutional majority of each house of the general assembly, or approval by the legislative council if the general assembly is not in session.

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

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

4. A political subdivision receiving communications services from the state as of April 1, 1986, may continue to do so but communications services shall not be provided or resold to additional political subdivisions other than a school corporation, a city library, a library service area as provided in chapter 256, and a county library as provided in chapter 336. The rates charged to the

political subdivision shall be the same as the rates charged to state agencies.

2001 Acts, ch 158, §3
Subsection 4 amended

8D.11A Proprietary interests.

The commission may charge a negotiated fee, to recover a share of the costs related to the research and development, initial production, and derivative products of its proprietary software and hardware, telecommunications architecture design, and proprietary technology applications developed to support authorized users, to private vendors and to other political entities and subdivisions, including but not limited to states, territories, protectorates, and foreign countries. The commission may enter into nondisclosure agreements to protect the state of Iowa's proprietary interests. The provisions of chapter 23A relating to noncompetition by state agencies and political subdivisions with private enterprise shall not apply to commission activities authorized under this section.

2001 Acts, ch 22, §1
NEW section

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 branch, 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 communica-

tions 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 branch, 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 and state communications shall be based on the ongoing operational costs of the network and of providing state communications only. For the services rendered to state agencies by the commission, the commission shall prepare a statement of services rendered and the agencies shall pay in a manner consistent with procedures established by the department of revenue and finance.

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 originator of the communication 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 con-

sistent 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 branch provided that the judicial branch contributes an amount consistent with the judicial branch's share of use for the part of the network in which the judicial branch 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.

19. Access to the network shall be offered to the department of public safety and the department of public defense for the purpose of establishing and operating a shared data-only network providing law enforcement, emergency management, disaster service, emergency warning, and other emergency information dissemination services to federal, state, and local law enforcement agencies as provided in section 80.9, and local emergency management offices established under the authority of sections 29C.9 and 29C.10.

Appropriations for network costs; 99 Acts, ch 207; 2000 Acts, ch 1214, §23, 57, 58; 2000 Acts, ch 1226, §1 - 3, 5, 16, 19, 30; 2001 Acts, ch 176, §21 - 23, 26; 2001 Acts, ch 189, §1 - 3, 12, 13, 15, 18; 2001 Acts, 2nd Ex, ch 6, §2, 37

Section not amended; footnote revised

CHAPTER 8E

STATE GOVERNMENT ACCOUNTABILITY (ACCOUNTABLE GOVERNMENT ACT)

SUBCHAPTER I

GENERAL PROVISIONS

8E.101 Title.

This chapter shall be known and may be cited as the "*Accountable Government Act*".

2001 Acts, ch 169, §8
NEW section

8E.102 Purposes.

This chapter is intended to create mechanisms to most effectively and efficiently respond to the needs of Iowans and continuously improve state government performance, including by doing all of the following:

1. Allocating human and material resources available to state government to maximize measurable results for Iowans.
2. Improving decision making at all levels of state government.
3. Enhancing state government's relationship with citizens and taxpayers by providing for the greatest possible accountability of the government to the public.

2001 Acts, ch 169, §9
NEW section

8E.103 Definitions.

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

1. "*Agency*" means a principal central depart-

ment enumerated in section 7E.5. For purposes of this chapter, each division within the department of commerce shall be considered an agency, and each bureau within a division of the department of commerce shall be considered a division, as otherwise provided in chapter 7E.

2. "*Agency performance plan*" means an action plan based on an agency strategic plan which utilizes performance measures, data sources, and performance targets to achieve the agency's goals adopted pursuant to section 8E.208.

3. "*Agency strategic plan*" means the strategic plan for the agency adopted pursuant to section 8E.206.

4. "*Department*" means the department of management.

5. "*Enterprise strategic plan*" means the strategic plan for the executive branch of state government adopted pursuant to section 8E.204.

6. "*Performance target*" means a desired level of performance, demonstrating specific progress toward the attainment of a goal which is part of a strategic plan as provided in section 8E.208.

7. "*Strategic plan*" means an enterprise strategic plan or an agency strategic plan.

2001 Acts, ch 169, §10
NEW section

8E.104 Administration.

The department shall oversee the administration of this chapter in cooperation with agencies as provided in this chapter. The department shall

adopt rules as necessary in order to administer this chapter. However, the state board of regents shall oversee and implement the provisions of this chapter for institutions governed under chapter 262.

2001 Acts, ch 169, §11
NEW section

8E.105 Chapter evaluation.

The department shall conduct an evaluation of the effectiveness of this chapter in carrying out the purposes of this chapter as provided in section 8E.102. The department shall submit a report of its findings and recommendations to the governor and general assembly not later than January 10, 2006.

2001 Acts, ch 169, §12
NEW section

SUBCHAPTER II

STRATEGIC PLANNING AND PERFORMANCE MEASUREMENT

8E.201 Agency duties and powers.

Each agency shall administer the application of this chapter to the agency in cooperation with the department. Each agency shall measure and monitor progress toward achieving goals which relate to programs administered by the agency pursuant to the enterprise strategic plan, the agency strategic plan, and the agency performance plan.

2001 Acts, ch 169, §13
NEW section

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

1. The department and each agency shall provide for the widest possible dissemination of information between agencies and the public relating to the enterprise strategic plan and agency strategic plans, including but not limited to internet access. This section does not require the department or an agency to release information which is classified as a confidential record under this Code, including but not limited to section 22.7.

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

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

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

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

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

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

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

3. A record which is confidential under this Code, including but not limited to section 22.7, shall not be released to the public under this section.

2001 Acts, ch 169, §14
NEW section

8E.203 Strategic plan — purposes.

The purposes of strategic plans are to promote long-term and broad thinking, focus on results for Iowans, and guide the allocation of human and material resources and day-to-day activities.

2001 Acts, ch 169, §15
NEW section

8E.204 Adoption and revision of an enterprise strategic plan and agency strategic plans.

1. The department, in consultation with agencies, shall adopt an enterprise strategic plan. Each agency shall adopt an agency strategic plan aligned with the enterprise strategic plan.

2. The department or an agency shall adopt and revise a strategic plan which includes input from customers and stakeholders following an opportunity for broad public participation in strategic planning. The department or an agency developing or revising a strategic plan shall include input from state employees, including written and oral comments. Upon adoption of the enterprise strategic plan by the department, the plan shall be disseminated to each agency and made available to all state employees. Upon adoption of the agency's strategic plan, the agency shall provide the department with a copy of the agency strategic plan and make the strategic plan available to all agency employees. The enterprise strategic plan and all agency strategic plans shall be available to the public.

3. The department and agencies shall annually review the enterprise strategic plan. An agency shall conduct an annual review of its agency strategic plan. Revisions in the strategic plan may be prompted by a reexamination of priorities or the need to redirect state resources based on new circumstances, including events or trends.

2001 Acts, ch 169, §16
NEW section

8E.205 Enterprise strategic plan.

The enterprise strategic plan shall identify major policy goals of the state. The enterprise strategic plan shall also describe multiagency strategies to achieve major policy goals, and establish the means to gauge progress toward achieving the major policy goals.

2001 Acts, ch 169, §17
NEW section

8E.206 Agency strategic plans.

1. An agency shall adopt an agency strategic plan which shall follow a format and include elements as determined by the department in consultation with agencies.

2. An agency shall align its agency strategic plan with the enterprise strategic plan and show the alignment.

2001 Acts, ch 169, §18
NEW section

8E.207 Agency performance plans.

Each agency shall develop an annual performance plan to achieve the goals provided in the agency strategic plan, including the development of performance targets using its performance measures. The agency shall use its performance plan to guide its day-to-day operations and track its progress in achieving the goals specified in its agency strategic plan.

1. An agency shall align its agency performance plan with the agency strategic plan and show the alignment in the agency performance plan.

2. An agency shall align individual performance instruments with its agency performance plan.

2001 Acts, ch 169, §19
NEW section

8E.208 Performance measures, performance targets, and performance data.

The department, in consultation with agencies, shall establish guidelines that will be used to create performance measures, performance targets, and data sources for each agency and each agency's functions.

2001 Acts, ch 169, §20
NEW section

8E.209 Periodic performance audits and performance data validation.

1. The department, in consultation with the legislative fiscal bureau, the auditor of state, and agencies, shall establish and implement a system of periodic performance audits. The purpose of a performance audit is to assess the performance of an agency in carrying out its programs in light of the agency strategic plan, including the effective-

ness of its programs, based on performance measures, performance targets, and performance data. The department may make recommendations to improve agency performance which may include modifying, streamlining, consolidating, expanding, redesigning, or eliminating programs.

2. The department, in cooperation with the legislative fiscal bureau and the auditor of state, shall provide for the analysis of the integrity and validity of performance data.

2001 Acts, ch 169, §21
NEW section

8E.210 Reporting requirements.

1. Each agency shall prepare an annual performance report stating the agency's progress in meeting performance targets and achieving its goals consistent with the enterprise strategic plan, its agency strategic plan, and its performance plan. An annual performance report shall include a description of how the agency has reallocated human and material resources in the previous fiscal year. The department, in conjunction with agencies, shall develop guidelines for annual performance reports, including but not limited to a reporting schedule. An agency may incorporate its annual performance report into another report that the agency is required to submit to the department.

2. The annual performance reporting required under this section shall be used to improve performance, improve strategic planning and policy decision making, better allocate human and material resources, recognize superior performance, and inform Iowans about their return from investment in state government.

2001 Acts, ch 169, §22
NEW section

SUBCHAPTER III

INVESTMENT DECISIONS

8E.301 Scope.

The department, in cooperation with agencies, shall establish methodologies for use in making major investment decisions, including methodologies based on return on investment and cost-benefit analysis. The department and agencies may also utilize these methodologies to review current investment decisions. The department shall establish procedures for implementing the methodologies, requiring independent verification and validation of investment results, and providing reports to the governor and the legislative fiscal bureau regarding the implementation.

2001 Acts, ch 169, §23
See also §12B.10
NEW section

CHAPTER 9

SECRETARY OF STATE

9.6 Iowa official register.

In odd-numbered years, the secretary of state shall compile for publication the Iowa official register which shall contain historical, political, and other statistics of general value, but nothing of a

partisan character.

See §7A.20

Publication requirement inapplicable to Iowa official register during 2001 and 2002 calendar years; 2001 Acts, ch 187, §25

Section not amended; footnote added

CHAPTER 9E

NOTARIAL ACTS

9E.3 Appointment — revocation.

1. The secretary of state may appoint residents of this state as notaries public and may revoke an appointment for cause.

2. The secretary of state shall appoint members of the general assembly as notaries public, upon request, and may revoke an appointment for cause.

3. The secretary of state may appoint as a notary public a resident of a state bordering Iowa if that person's place of work or business is within the state of Iowa. If a notary who is a resident of a state bordering Iowa ceases to work or maintain a place of business in Iowa, the notary commission expires.

4. A person shall not be appointed as a notary public by the secretary of state unless the person is at least eighteen years of age and not disqualified from voting as provided in section 48A.6.

2001 Acts, ch 38, §1; 2001 Acts, ch 176, §45, 46

2001 amendment adding subsection 4 takes effect January 1, 2002; 2001 Acts, ch 176, §45, 46

NEW subsection 4

9E.6 Application — fee.

1. Before a commission is delivered to a person appointed as a notary public, the person shall:

a. Complete an application for appointment as a notary public on a form prescribed by the secretary of state.

b. Remit the sum of thirty dollars to the secretary of state. However, persons appointed as notaries public under section 9E.3, subsection 2, are not subject to the fee imposed by this subsection.

2. When the secretary of state determines that the requirements of this section are satisfied, the secretary shall execute and deliver a certificate of commission to the person appointed.

2001 Acts, ch 38, §2; 2001 Acts, ch 176, §45, 46

2001 amendment striking subsection 3 takes effect January 1, 2002; 2001 Acts, ch 176, §45, 46

Subsection 3 stricken

9E.6A Acquisition and use of stamp or seal.

Each person performing a notarial act pursuant

to section 9E.10 must acquire and use a stamp or seal as provided in this chapter. However, this section shall not apply to a person performing a notarial act under federal authority. The stamp or seal shall contain all of the following:

1. For a person appointed as a notary public pursuant to section 9E.3, all of the following:

a. The words "Notarial Seal" and "Iowa".

b. The person's name.

c. The words "Commission Number" followed by a number assigned to the notary public by the secretary of state.

d. The words "My Commission Expires" followed either by the date that the notary public's term would ordinarily expire as provided in section 9E.4 or a blank line. If the seal or stamp contains a blank line, the person must print the date that the notary public's term would ordinarily expire on the blank line imprinted on each document, instrument, or paper subject to a notarial act.

2. For any other person, all of the following:

a. The words "Notarial Seal" and "Iowa".

b. The person's name.

c. The person's title under which the person may perform a notarial act under section 9E.10.

2001 Acts, ch 38, §3; 2001 Acts, ch 176, §45, 46

Section takes effect January 1, 2002; 2001 Acts, ch 176, §45, 46

NEW section

9E.14 Certificate of notarial acts.

1. A notarial act must be evidenced by a certificate signed and dated by a notarial officer. The certificate must include identification of the jurisdiction in which the notarial act is performed and the title of the office of the notarial officer and shall include the official stamp or seal of the office. If the notarial officer is a commissioned officer on active duty in the military service of the United States, the certificate must also include the officer's rank.

2. A certificate of a notarial act is sufficient if it meets the requirements of subsection 1, and is in any of the following forms:

a. The short form set forth in section 9E.15.

b. A form otherwise prescribed by the law of this state, including those forms set out in chapter 558.

c. A form prescribed by the laws or regulations applicable in the place in which the notarial act was performed.

d. A form which sets forth the actions of the notarial officer and those are sufficient to meet the requirements of the designated notarial act.

3. By executing a certificate of a notarial act, the notarial officer certifies that the officer has made the determinations required by section 9E.9.

2001 Acts, ch 38, §4; 2001 Acts, ch 176, §45, 46
2001 amendment to subsection 1 takes effect January 1, 2002; 2001 Acts, ch 176, §45, 46
Subsection 1 amended

9E.15 Short forms.

The following short form certificates of notarial acts are sufficient for the purposes indicated, if completed with the information required by section 9E.14, subsection 1.

1. For an acknowledgment in an individual capacity:

State of
(County) of
This instrument was acknowledged before me on by
(date) (name(s) of person(s))
.....
(signature of notarial officer) (Stamp or Seal)
.....
Title (and Rank)
[My commission expires:]

2. For an acknowledgment in a representative capacity:

State of
(County) of
This instrument was acknowledged before me on (date) by (name(s) of person(s)) as (type of authority, e.g., officer, trustee, etc.) of (name of party on behalf of whom instrument was executed).
.....
(signature of notarial officer) (Stamp or Seal)
.....
Title (and Rank)
[My commission expires:]

3. For a verification upon oath or affirmation:

State of
(County) of
Signed and sworn to (or affirmed) before me on by
(date) (name(s) of person(s) making statement)
.....
(signature of notarial officer) (Stamp or Seal)
.....
Title (and Rank)
[My commission expires:]

4. For witnessing or attesting a signature:

State of
(County) of
Signed or attested before me on by
(date) (name(s) of person(s))
.....
(signature of notarial officer) (Stamp or Seal)
.....
Title (and Rank)
[My commission expires:]

5. For attestation of a copy of a document:

State of
(County) of
I certify that this is a true and correct copy of a document in the possession of
Dated
.....
(signature of notarial officer) (Stamp or Seal)
.....
Title (and Rank)
[My commission expires:]

2001 Acts, ch 38, §5; 2001 Acts, ch 176, §45, 46
2001 amendments to this section take effect January 1, 2002; 2001 Acts, ch 176, §45, 46
Section amended

CHAPTER 12

TREASURER OF STATE

12.8 Investment or deposit of surplus — appropriation — investment income — lending securities.

The treasurer of state shall invest or deposit, as provided by law, any of the public funds not currently needed for operating expenses and shall do so upon receipt of monthly notice from the director of revenue and finance of the amount not so needed. In the event of loss on redemption or sale of securities invested as prescribed by law, and if the transaction is reported to the executive council, neither the treasurer nor director of revenue and finance is personally liable but the loss shall be charged against the funds which would have received the profits or interest of the investment and there is appropriated from the funds the amount so required.

Investment income may be used to maintain compensating balances, pay transaction costs for investments made by the treasurer of state, and pay administrative and related overhead costs incurred by the treasurer of state in the management of money. The treasurer of state shall coordinate with the affected departments to determine how compensating balances, transaction costs, or money management and related costs will be established. All charges against a retirement system must be documented and notification of the charges shall be made to the appropriate administration of the retirement system affected.

The treasurer of state, with the approval of the investment board of the Iowa public employees' retirement system, may conduct a program of lending securities in the Iowa public employees' retirement system portfolio. When securities are loaned as provided by this paragraph, the treasurer shall act in the manner provided for investment of moneys in the Iowa public employees' retirement fund under section 97B.7. The treasurer of state shall report at least annually to the investment board of the Iowa public employees' retirement system on the program and shall provide additional information on the program upon the request of the investment board or the employees of the Iowa public employees' retirement system division of the department of personnel.

²⁴ For future amendment effective July 1, 2002, see 2001 Acts, ch 68, §1.

Section not amended; footnote added

12.30 Coordination of bonding activities.

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

a. “*Authority*” means a department, or public or quasi-public instrumentality of the state including, but not limited to, the authority created under chapter 12E, 16, 16A, 175, 257C, 261A, or 327I, which has the power to issue obligations, ex-

cept that “*authority*” does not include the state board of regents or the Iowa finance authority to the extent it acts pursuant to chapter 260C.

b. “*Obligations*” means notes, bonds, including refunding bonds, and other evidences of indebtedness of an authority.

2. Notwithstanding any other provision of the Code the treasurer shall coordinate the issuance of obligations by authorities. The treasurer, or the treasurer's designee, shall serve as ex officio non-voting member of each authority. Prior to the issuance of obligations, an authority shall notify the treasurer of its intention to do so. The treasurer shall:

a. Select and fix the compensation for, in consultation with the respective authority, through a competitive selection procedure, attorneys, accountants, financial advisors, banks, underwriters, insurers, and other employees and agents which in the treasurer's judgment are necessary to carry out the authority's intention. Prior to the initial selection, the treasurer shall, after consultation with the authorities, 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 treasurer 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 the engagement. The treasurer may waive the requirements for a competitive selection procedure for any specific employment upon written notice to the executive council stating why the waiver is in the public interest. Upon selection by the treasurer, the authority shall promptly employ the individual or firm and be responsible for payment of costs.

b. Submit an account to the respective authority for all costs incurred in each transaction. The treasurer will charge an authority for costs of administration. The authority shall disburse to the treasurer the amounts set forth in the account.

c. Direct the investment or deposit of the proceeds of the sale of the obligations, in accordance with the language of the documents drafted to effectuate issuance of the obligations, except for the proceeds necessary to fund the ongoing operations of the authority. This paragraph does not apply to proceeds of obligations issued before July 1, 1986.

d. Collect from an authority and other sources, any statistical and financial information necessary to draft an offering document or prepare a presentation necessary for the issuance or mar-

keting of the obligations.

3. Each respective authority shall consult with the treasurer on the following:

a. Amount, terms, and conditions of the obligations to be issued by the authority including other provisions deemed necessary by the treasurer or the authority.

b. The documents or instruments necessary to effectuate issuance of the obligation.

c. Presentations to rating agencies and marketing activities. The treasurer may choose to participate in these presentations.

4. Professional services, including but not limited to attorneys, accountants, financial advisors, banks, underwriters, insurers, and other employees employed by a project sponsor may be selected by the project sponsor, if the obligation is issued in behalf of the project sponsor and the purchaser of the obligation does not have recourse to the authority or state.

5. The treasurer may delay implementation of this section for up to six months following July 1, 1986, for an authority to facilitate an orderly transition.

Section not amended; footnote deleted

12.32 Definitions.

As used in section 12.31, this section, and sections 12.33 through 12.43B, unless the context otherwise requires:

1. *“Eligible borrower”* means any person who is in the business or is entering the business of producing, processing, or marketing horticultural crops or nontraditional crops in this state or any person in this state who is qualified to participate in one of the programs in this section and sections 12.33 through 12.43B. *“Eligible borrower”* does not include a person who has been determined to be delinquent in making child support payments or any other payments due the state.

2. *“Eligible lending institution”* means a financial institution that is empowered to make commercial loans and is eligible pursuant to chapter 12C to be a depository of state funds.

3. *“Linked investment”* means a certificate of deposit placed pursuant to this section and sections 12.33 through 12.43B by the treasurer of state with an eligible lending institution, at an interest rate not more than three percent below current market rate on the condition that the institution agrees to lend the value of the deposit, according to the investment agreement provided in section 12.35, to an eligible borrower at a rate not to exceed four percent above the rate paid on the certificate of deposit. The treasurer of state shall determine and make available the current market rate which shall be used each month.

4. *“Qualified linked investment”* means a linked investment in which a certificate of deposit is placed by the treasurer of state with an eligible lending institution under the traditional livestock producers linked investment loan program estab-

lished under section 12.43A.

2001 Acts, ch 24, §1
Subsections 1 and 3 amended

12.34 Linked investments — limitations — rules — maturity and renewal of certificates.

1. The treasurer of state may invest up to the lesser of one hundred eight million dollars or ten percent of the balance of the state pooled money fund in certificates of deposit in eligible lending institutions as provided in sections 12.32 and 12.33, this section, and sections 12.35 through 12.43B. The moneys invested pursuant to this section shall be used as follows:

a. The treasurer of state may invest up to sixty-eight million dollars to support programs provided in sections 12.32 and 12.33, this section, and sections 12.35 through 12.43B other than the traditional livestock producers linked investment loan program as provided in section 12.43A and the value-added agricultural linked investment loan program as provided in section 12.43B.

b. The treasurer of state shall invest the remaining amount as follows:

(1) At least twenty million dollars shall be invested in order to support the traditional livestock producers linked investment loan program as provided in section 12.43A.

(2) At least twenty million dollars shall be invested in order to support the value-added agricultural linked investment loan program as provided in section 12.43B.

2. *a.* The treasurer of state shall adopt rules pursuant to chapter 17A to administer sections 12.32 and 12.33, this section, and sections 12.35 through 12.43B.

b. The treasurer of state in cooperation with the board of directors of the agricultural development authority as established in section 175.3 shall adopt rules for the administration of the traditional livestock producers linked investment loan program as provided in section 12.43A. The treasurer of state in cooperation with the agricultural products advisory council established in section 15.203 shall adopt rules for the administration of the value-added agricultural linked investment loan program as provided in section 15.204.

3. A certificate of deposit, which is placed by the treasurer of state with an eligible lending institution on or after July 1, 1996, may be renewed at the option of the treasurer. The following shall apply to the certificate of deposit:

a. For a linked investment other than a qualified linked investment, the initial certificate of deposit for a given borrower shall have a maturity of one year. The certificate of deposit may be renewed on an annual basis for a total term not to exceed five years.

b. For a qualified linked investment, the initial certificate of deposit for a given borrower shall have a maturity of one year. The certificate of de-

posit may be renewed on an annual basis for a total term not to exceed three years.

2001 Acts, ch 24, §2
Subsections 1 and 2 amended

12.35 Agreement — loan applications.

1. An eligible lending institution that desires to receive a linked investment shall enter into an agreement with the treasurer of state, which shall include requirements necessary for the eligible lending institution to comply with sections 12.32 through 12.34, this section, and sections 12.36 through 12.43B.

2. An eligible lending institution that desires to receive a linked investment shall accept and review applications for loans from eligible borrowers.

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

2001 Acts, ch 24, §3
Subsection 1 amended

12.36 Actions by treasurer.

1. The treasurer of state shall accept or reject a linked investment loan package or any portion of the package based on the type or terms of the loan involved, the availability of state funds, or the compliance of the eligible borrower or eligible lending institution.

2. Upon acceptance of the linked investment loan package or any portion of the package, the treasurer of state shall place certificates of deposit with the eligible lending institution at a rate not more than three percent below the current market rate. The treasurer of state shall not place a certificate of deposit with an eligible lending institution pursuant to sections 12.32 through 12.35, this section, and sections 12.37 through 12.43B, unless the certificate of deposit earns a rate of interest of at least two percent. Interest earned on the certificate of deposit and principal not renewed shall be remitted to the treasurer of state at the time the certificate of deposit matures. Certificates of deposit placed pursuant to sections 12.32 through 12.35, this section, and sections 12.37 through 12.43B are not subject to a penalty for early withdrawal.

2001 Acts, ch 24, §4
Subsection 2 amended

12.40 Rural small business transfer linked investment loan program.

1. As used in this section, “*rural small business*” means an existing rural small business, for which local competition does not exist in the prin-

cipal realm of business activity of that business, and the loss of which will work a hardship on the rural community. A rural small business may include a grocery store, drug store, gasoline station, convenience store, hardware business, or farm supply store. A rural small business does not include a new business.

2. The treasurer of state shall adopt rules consistent with sections 12.32 through 12.39, this section, and sections 12.41 through 12.43B to implement a rural small business transfer linked investment loan program to maintain and expand existing employment opportunities and the provision of retail goods on a local level in small rural communities by assisting in the transfer of ownership of retail-oriented businesses where, in the absence of sufficient financial assistance, the businesses may close.

3. In order to qualify as an eligible borrower, the rural small business must be located in a city with a population of five thousand or less. A rural small business located in a city located in a county with a population in excess of three hundred thousand, if the city is contiguous to another city in the county and that other city is contiguous to the largest city in that county, shall be ineligible to qualify as a borrower. In order to qualify under this program, all owners of the business or borrowers must not have a combined net worth exceeding five hundred thousand dollars as defined in rules adopted by the treasurer of state pursuant to chapter 17A and the rural small business must meet all of the following criteria:

a. Be a for-profit business.
b. Have annual sales of two million dollars or less.
c. Not be operated out of the home of any person, unless the person is eligible for a deduction on federal income taxes pursuant to 26 U.S.C. § 280A.

d. Not involve real estate investments, rental of real estate, leasing of real estate, or real estate speculation.

e. Liquor, beer, and wine sales must not exceed twenty percent of annual sales for establishments holding a class “C” liquor license issued pursuant to section 123.30.

4. In order to qualify as an eligible borrower, the transfer of the rural small business must be by purchase, lease-purchase, or contract of sale. The purchase must be for a portion of the business which is essential to its continued viability, including real estate where the business is located, fixtures attached to the real estate, equipment, supplies, and machinery relied upon by the business, and inventory for sale by the business.

5. In order to qualify as an eligible borrower, a borrower and the seller of the rural small business shall not be within the third degree of consanguinity or affinity.

6. Loan proceeds shall not be used to refinance

existing debt, including credit card debt. However, proceeds may be used to refinance a short-term bridge loan made in anticipation of the treasurer's approval of the linked investment loan package.

7. During the lifetime of this loan program, the maximum amount of assistance that an eligible borrower or a business may receive through this loan program shall be fifty thousand dollars.

2001 Acts, ch 24, §5
Subsection 2 amended

12.43A Traditional livestock producer's linked investment loan program.

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

a. "Farm operation" means the same as defined in section 352.2.

b. "Livestock" means cattle or swine.

c. "Livestock operation" means an animal feeding operation as defined in section 455B.161 in which livestock is provided care and feeding, or any other area which is used for raising crops or other vegetation and upon which livestock is fed or allowed to graze.

d. "Traditional livestock producer" means a person who is the owner and operator of livestock subject to care and feeding at a livestock operation in which the person holds a legal interest. The person may own the livestock or own the livestock jointly with another person. The person must be actively engaged in the livestock operation by making management decisions and performing physical work relating to the care and feeding of the livestock on a regular, continuous, and substantial basis in a manner that is essential to the success of the livestock operation.

2. The treasurer of state shall adopt rules as provided in section 12.34 to implement a traditional livestock producers linked investment loan program. The purpose of the program is to increase the availability of lower cost loans to traditional livestock producers.

3. In order to qualify for a loan in accordance with an investment agreement under sections 12.32 through 12.43, this section, and section 12.43B, all of the following requirements must be satisfied:

a. In order to be an eligible borrower, all of the following must apply:

(1) The borrower must be a traditional livestock producer.

(2) The borrower must be a resident of this state who is at least eighteen years of age.

(3) The borrower must not be any of the following:

(a) A party to a pending legal or administrative action, including a contested case proceeding under chapter 17A, relating to an alleged violation involving an animal feeding operation as regulated by the department of natural resources, regardless of whether the pending action is brought by the department or the attorney general.

(b) Classified as a habitual violator for a violation of state law involving an animal feeding operation as regulated by the department of natural resources.

b. The livestock operation must be located in this state.

c. The gross income earned by the borrower's farm operation must be more than fifty thousand dollars but not more than five hundred thousand dollars for the borrower's last tax year.

d. At least fifty percent of the average annual gross income earned by the borrower's farm operation derives from livestock owned and sold by the borrower. The average annual gross income shall be computed as the average of the gross income earned by the farm operation in the three preceding tax years.

4. An investment agreement shall not be for a loan of more than one hundred thousand dollars.

5. A borrower is not eligible to receive a loan as part of a linked investment loan package under this program if the borrower has received three loans pursuant to a linked investment loan package under this program approved by the treasurer of state within the last ten years. For purposes of this subsection, a loan provided as part of a renewed certificate of deposit shall be deemed to be a new loan.

2001 Acts, ch 24, §6
Subsection 3, unnumbered paragraph 1 amended

HEALTHY IOWANS TOBACCO TRUST

12.65 Healthy Iowans tobacco trust.

1. A healthy Iowans tobacco trust is created in the office of the treasurer of state. Moneys transferred to the healthy Iowans tobacco trust from the endowment for Iowa's health account of the tobacco settlement trust fund established in section 12E.12 and appropriated or transferred from any other source shall be deposited in the healthy Iowans tobacco trust.

2. Moneys deposited in the healthy Iowans tobacco trust shall be used only in accordance with appropriations from the healthy Iowans tobacco trust for purposes related to health care, substance abuse treatment and enforcement, tobacco use prevention and control, and other purposes related to the needs of children, adults, and families in the state.

3. Notwithstanding section 8.33, any unexpended balance in the healthy Iowans tobacco trust at the end of the fiscal year shall be retained in the trust. Notwithstanding section 12C.7, subsection 2, interest or earnings on investments or time deposits of the moneys in the healthy Iowans tobacco trust shall be credited to the healthy Iowans tobacco trust.

4. Moneys in the healthy Iowans tobacco trust shall be considered part of the general fund of the state for cash flow purposes only, provided any

moneys used for cash flow purposes are returned to the trust by the close of each fiscal year.

2001 Acts, ch 164, §1, 21; 2001 Acts, ch 184, §5, 16
See Code editor's note
Section amended

12.72 Vision Iowa fund and reserve funds.

1. A vision Iowa fund is created and established as a separate and distinct fund in the state treasury. The moneys in the fund are appropriated to the vision Iowa board for purposes of the vision Iowa program established in section 15F.302. Moneys 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 of the vision Iowa fund. The treasurer of state shall act as custodian of the fund and disburse moneys contained in the fund as directed by the vision Iowa board, including automatic disbursements of funds received pursuant to the terms of bond indentures and documents and security provisions to trustees. The fund shall be administered by the vision Iowa board which shall make expenditures from the fund consistent with the purposes of the vision Iowa program without further appropriation. An applicant under the vision Iowa program shall not receive more than seventy-five million dollars in financial assistance from the fund.

2. Revenue for the vision Iowa fund shall include, but is not limited to, the following, which shall be deposited with the treasurer of state or the treasurer's designee as provided by any bond or security documents and credited to the fund:

a. The proceeds of bonds issued to capitalize and pay the costs of the fund and investment earnings on the proceeds.

b. Interest attributable to investment of money in the fund or an account of the fund.

c. 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.

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

4. *a.* The treasurer of state may create and establish one or more special funds, to be known as "*bond reserve funds*", to secure one or more issues of bonds or notes issued pursuant to section 12.71. The treasurer of state shall pay into each bond reserve fund any moneys appropriated and made available by the state or the treasurer for the purpose of the fund, any proceeds of sale of notes or bonds to the extent provided in the resolutions authorizing their issuance, and any other moneys which may be available to the treasurer for the purpose of the fund from any other sources. All moneys held in a bond reserve fund, except as

otherwise provided in this chapter, shall be used as required solely for the payment of the principal of bonds secured in whole or in part by the fund or of the sinking fund payments with respect to the bonds, the purchase or redemption of the bonds, the payment of interest on the bonds, or the payments of any redemption premium required to be paid when the bonds are redeemed prior to maturity.

b. Moneys in a bond reserve fund shall not be withdrawn from it at any time in an amount that will reduce the amount of the fund to less than the bond reserve fund requirement established for the fund, as provided in this subsection, except for the purpose of making, with respect to bonds secured in whole or in part by the fund, payment when due of principal, interest, redemption premiums, and the sinking fund payments with respect to the bonds for the payment of which other moneys of the treasurer are not available. Any income or interest earned by, or incremental to, a bond reserve fund due to the investment of it may be transferred by the treasurer to other funds or accounts to the extent the transfer does not reduce the amount of that bond reserve fund below the bond reserve fund requirement for it.

c. The treasurer of state shall not at any time issue bonds, secured in whole or in part by a bond reserve fund if, upon the issuance of the bonds, the amount in the bond reserve fund will be less than the bond reserve fund requirement for the fund, unless the treasurer at the time of issuance of the bonds deposits in the fund from the proceeds of the bonds issued or from other sources an amount which, together with the amount then in the fund, will not be less than the bond reserve fund requirement for the fund. For the purposes of this subsection, the term "*bond reserve fund requirement*" means, as of any particular date of computation, an amount of money, as provided in the resolutions authorizing the bonds with respect to which the fund is established.

d. To assure the continued solvency of any bonds secured by the bond reserve fund, provision is made in paragraph "*a*" for the accumulation in each bond reserve fund of an amount equal to the bond reserve fund requirement for the fund. In order further to assure maintenance of the bond reserve funds, the treasurer shall, on or before January 1 of each calendar year, make and deliver to the governor the treasurer's certificate stating the sum, if any, required to restore each bond reserve fund to the bond reserve fund requirement for that fund. Within thirty days after the beginning of the session of the general assembly next following the delivery of the certificate, the governor shall submit to both houses printed copies of a budget including the sum, if any, required to restore each bond reserve fund to the bond reserve fund requirement for that fund. Any sums appropriated by the general assembly and paid to the treasurer

pursuant to this subsection shall be deposited by the authority in the applicable bond reserve fund.

2001 Acts, ch 24, §7, 8; 2001 Acts, 1st Ex, ch 5, §3, 7
 Amendment to subsection 4 is effective July 5, 2001, and applies retroactively to July 1, 2001; 2001 Acts, 1st Ex, ch 5, §7
 Subsection 1 amended
 Subsection 2, unnumbered paragraph 1 amended
 Subsection 4 stricken and rewritten

12.73 Vision Iowa fund moneys — administrative costs.

During the term of the vision Iowa program established in section 15F.302, two hundred thousand dollars of the moneys deposited each fiscal year in the vision Iowa fund and appropriated for the vision Iowa program shall be allocated each fiscal year to the department of economic development for administrative costs incurred by the department for purposes of administering the vision Iowa program.

2001 Acts, ch 185, §34
 Section amended

12.74 Pledges.

It is the intention of the general assembly that a pledge made in respect of bonds or notes shall be valid and binding from the time the pledge is made, that the money or property so pledged and received after the pledge by the treasurer of state shall immediately be subject to the lien of the pledge without physical delivery or further act, and that the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the treasurer of state whether or not the parties have notice of the lien.

2001 Acts, ch 24, §9; 2001 Acts, ch 185, §35, 49
 See Code editor's note to §12.65
 Subsection 2 stricken and subsection 1 redesignated as an unnumbered paragraph

12.82 School infrastructure fund and reserve funds.

1. A school infrastructure fund is created and established as a separate and distinct fund in the state treasury under the control of the department of education. The fund shall be used for purposes of the school infrastructure program established in section 292.2.

2. Revenue for the school infrastructure fund shall include, but is not limited to, the following, which shall be deposited with the treasurer of state or its designee as provided by any bond or security documents and credited to the fund:

a. The proceeds of bonds issued to capitalize and pay the costs of the fund and investment earnings on the proceeds.

b. Interest attributable to investment of money in the fund or an account of the fund.

c. 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.

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

4. *a.* The treasurer of state may create and establish one or more special funds, to be known as “bond reserve funds”, to secure one or more issues of bonds or notes issued pursuant to section 12.81. The treasurer of state shall pay into each bond reserve fund any moneys appropriated and made available by the state or the treasurer for the purpose of the fund, any proceeds of sale of notes or bonds to the extent provided in the resolutions authorizing their issuance, and any other moneys which may be available to the treasurer for the purpose of the fund from any other sources. All moneys held in a bond reserve fund, except as otherwise provided in this chapter, shall be used as required solely for the payment of the principal of bonds secured in whole or in part by the fund or of the sinking fund payments with respect to the bonds, the purchase or redemption of the bonds, the payment of interest on the bonds, or the payments of any redemption premium required to be paid when the bonds are redeemed prior to maturity.

b. Moneys in a bond reserve fund shall not be withdrawn from it at any time in an amount that will reduce the amount of the fund to less than the bond reserve fund requirement established for the fund, as provided in this subsection, except for the purpose of making, with respect to bonds secured in whole or in part by the fund, payment when due of principal, interest, redemption premiums, and the sinking fund payments with respect to the bonds for the payment of which other moneys of the treasurer are not available. Any income or interest earned by, or incremental to, a bond reserve fund due to the investment of it may be transferred by the treasurer to other funds or accounts to the extent the transfer does not reduce the amount of that bond reserve fund below the bond reserve fund requirement for it.

c. The treasurer of state shall not at any time issue bonds, secured in whole or in part by a bond reserve fund if, upon the issuance of the bonds, the amount in the bond reserve fund will be less than the bond reserve fund requirement for the fund, unless the treasurer at the time of issuance of the bonds deposits in the fund from the proceeds of the bonds issued or from other sources an amount which, together with the amount then in the fund, will not be less than the bond reserve fund requirement for the fund. For the purposes of this subsection, the term “bond reserve fund requirement” means, as of any particular date of computation, an amount of money, as provided in the resolutions authorizing the bonds with respect to which the fund is established.

d. To assure the continued solvency of any bonds secured by the bond reserve fund, provision

is made in paragraph “a” for the accumulation in each bond reserve fund of an amount equal to the bond reserve fund requirement for the fund. In order further to assure maintenance of the bond reserve funds, the treasurer shall, on or before January 1 of each calendar year, make and deliver to the governor the treasurer’s certificate stating the sum, if any, required to restore each bond reserve fund to the bond reserve fund requirement for that fund. Within thirty days after the beginning of the session of the general assembly next following the delivery of the certificate, the governor shall submit to both houses printed copies of a budget including the sum, if any, required to restore each bond reserve fund to the bond reserve fund requirement for that fund. Any sums appropriated by the general assembly and paid to the treasurer pursuant to this subsection shall be deposited by the authority in the applicable bond reserve fund.

2001 Acts, 1st Ex, ch 5, §4, 7
Amendment to subsection 4 is effective July 5, 2001, and applies retroac-

tively to July 1, 2001; 2001 Acts, 1st Ex, ch 5, §7
Subsection 4 stricken and rewritten

12.84 Pledges.

It is the intention of the general assembly that a pledge made in respect of bonds or notes shall be valid and binding from the time the pledge is made, that the money or property so pledged and received after the pledge by the treasurer of state shall immediately be subject to the lien of the pledge without physical delivery or further act, and that the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the treasurer of state whether or not the parties have notice of the lien.

2001 Acts, ch 185, §36, 49
Subsection 2 stricken and subsection 1 redesignated as unnumbered paragraph 1

CHAPTER 12B

SECURITY OF THE REVENUE

12B.10 Public funds investment standards.

1. In addition to investment standards and requirements otherwise provided by law, the investment of public funds by the treasurer of state, state agencies authorized to invest funds, and political subdivisions of this state, shall comply with this section, except where otherwise provided by another statute specifically referring to this section.

The treasurer of state and the treasurer of each political subdivision shall at all times keep funds coming into their possession as public money in a vault or safe to be provided for that purpose or in one or more depositories approved pursuant to chapter 12C. However, the treasurer of state and the treasurer of each political subdivision shall invest, unless otherwise provided, any public funds not currently needed in investments authorized by this section.

2. The treasurer of state, state agencies authorized to invest funds, and political subdivisions of this state, when investing or depositing public funds, shall exercise the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use to attain the goals of this subsection. This standard requires that when making investment decisions, a public entity shall consider the role that the investment or deposit plays within the portfolio of assets of the public entity and the goals of this subsection. The primary goals of investment prudence shall be based in the following order of priority:

a. Safety of principal is the first priority.

b. Maintaining the necessary liquidity to match expected liabilities is the second priority.

c. Obtaining a reasonable return is the third priority.

3. Investments of public funds shall be made in accordance with written policies. A written investment policy shall address the goals set out in subsection 2 and shall also address, but is not limited to, compliance with state law, diversification, maturity, quality, and capability of investment management.

The trading of securities in which any public funds are invested for the purpose of speculation and the realization of short-term trading profits is prohibited.

Investments by a political subdivision must have maturities that are consistent with the needs and use of that political subdivision or agency.

4. The treasurer of state and all other state agencies authorized to invest funds shall only purchase and invest in the following:

a. Obligations of the United States government, its agencies and instrumentalities.

b. Certificates of deposit and other evidences of deposit at federally insured depository institutions approved pursuant to chapter 12C.

c. Prime bankers’ acceptances that mature within two hundred seventy days and that are eligible for purchase by a federal reserve bank, provided that at the time of purchase no more than thirty percent of the investment portfolio of the treasurer of state or any other state agency shall be in investments authorized by this paragraph and that at the time of purchase no more than five percent of the investment portfolio shall be in-

vested in the securities of a single issuer.

d. Commercial paper or other short-term corporate debt that matures within two hundred seventy days and that is 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, provided that at the time of purchase no more than five percent of all amounts invested in commercial paper and other short-term corporate debt shall be invested in paper and debt rated in the second highest classification, and provided further that at the time of purchase no more than thirty percent of the investment portfolio of the treasurer of state or any other state agency shall be in investments authorized by this paragraph and that at the time of purchase no more than five percent of the investment portfolio shall be invested in the securities of a single issuer.

e. Repurchase agreements whose underlying collateral consists of the investments set out in paragraphs “a” through “d” if the treasurer of state or state agency takes delivery of the collateral either directly or through an authorized custodian. Repurchase agreements do not include reverse repurchase agreements.

f. Investments authorized for the Iowa public employees’ retirement system in section 97B.7, subsection 2, paragraph “b”, except that investment in common stocks is not permitted.

g. An open-end management investment company organized in trust form registered with the federal securities and exchange commission under the federal Investment Company Act of 1940, 15 U.S.C. § 80(a), and operated in accordance with 17 C.F.R. § 270.2a-7.

Futures and options contracts are not permissible investments.

5. Political subdivisions of this state, including entities organized pursuant to chapter 28E whose primary function is other than to jointly invest public funds, shall purchase and invest only in the following:

a. Obligations of the United States government, its agencies and instrumentalities.

b. Certificates of deposit and other evidences of deposit at federally insured depository institutions approved pursuant to chapter 12C.

c. Prime bankers’ acceptances that mature within two hundred seventy days and that are eligible for purchase by a federal reserve bank, provided that at the time of purchase no more than ten percent of the investment portfolio shall be in investments authorized by this paragraph and that at the time of purchase no more than five percent of the investment portfolio shall be invested in the securities of a single issuer.

d. Commercial paper or other short-term corporate debt that matures within two hundred seventy days and that is rated within the two highest classifications, as established by at least one of the standard rating services approved by the superin-

endent of banking by rule adopted pursuant to chapter 17A, provided that at the time of purchase no more than five percent of all amounts invested in commercial paper and other short-term corporate debt shall be invested in paper and debt rated in the second highest classification, and provided further that at the time of purchase no more than ten percent of the investment portfolio shall be in investments authorized by this paragraph and that at the time of purchase no more than five percent of the investment portfolio shall be invested in the securities of a single issuer.

e. Repurchase agreements whose underlying collateral consists of the investments set out in paragraph “a” if the political subdivision takes delivery of the collateral either directly or through an authorized custodian. Repurchase agreements do not include reverse repurchase agreements.

f. An open-end management investment company registered with the federal securities and exchange commission under the federal Investment Company Act of 1940, 15 U.S.C. § 80(a), and operated in accordance with 17 C.F.R. § 270.2a-7.

g. A joint investment trust organized pursuant to chapter 28E prior to and existing in good standing on the effective date of this Act or a joint investment trust organized pursuant to chapter 28E after April 28, 1992, provided that the joint investment trust shall either be rated within the two highest classifications by at least one of the standard rating services approved by the superintendent of banking by rule adopted pursuant to chapter 17A and operated in accordance with 17 C.F.R. § 270.2a-7, or be registered with the federal securities and exchange commission under the federal Investment Company Act of 1940, 15 U.S.C. § 80(a), and operated in accordance with 17 C.F.R. § 270.2a-7. The manager or investment advisor of the joint investment trust shall be registered with the federal securities and exchange commission under the Investment Advisor Act of 1940, 15 U.S.C. § 80(b).

h. Warrants or improvement certificates of a levee or drainage district.

Futures and options contracts are not permissible investments.

6. The following investments are not subject to this section:

a. Investments by the public safety peace officers’ retirement system governed by chapter 97A.

b. Investments by the Iowa public employees’ retirement system governed by chapter 97B.

c. Investments by the Iowa finance authority governed by chapter 16.

d. Investments by the state board of regents. However, investments by the state board of regents or institutions governed by the state board of regents are limited to the following:

(1) Those investments set out in subsection 4.

(2) The common fund for nonprofit organizations.

(3) Common stocks.

(4) For investments of short-term operating funds, the funds shall not be invested in investments having maturities exceeding sixty-three months.

e. A pension and annuity retirement system governed by chapter 294.

f. Investments by the statewide fire and police retirement system governed by chapter 411.

g. Investments by the judicial retirement system governed by chapter 602, article 9.

h. Investments under the deferred compensation plan established by the executive council pursuant to section 509A.12.

i. Investments made by city hospitals as provided in section 392.6. However, investments by city hospitals are limited to the following:

(1) The same types of investments as the treasurer of state and other state agencies may make under this section.

(2) Investment in common stocks.

j. Investments by the tobacco settlement authority governed by chapter 12E.

k. Investments by municipal utility retirement systems governed under chapter 412.

2001 Acts, ch 102, §1
For future amendment to subsection 4 effective July 1, 2002, see 2001 Acts, ch 68, §2, 24
Subsection 6, NEW paragraph k

12B.10A Public investment maturity and procedural limitations.

1. The investment of public funds which are operating funds by a political subdivision shall be subject to the following:

a. As used in this section, “*operating funds*” means those funds which are reasonably expected to be expended during a current budget year or within fifteen months of receipt.

b. Operating funds must be identified and distinguished from all other funds available for investment.

c. Operating funds may only be invested in investments which mature within three hundred ninety-seven days or less and which are authorized by law for the investing public entity.

2. All investments of public funds by political subdivisions shall be subject to the following:

a. Each investment must be authorized by applicable law and the written investment policy of the political subdivision.

b. Each political subdivision whose investments involve the use of a public funds custodial agreement, as defined in section 12B.10C, shall comply with rules adopted pursuant to section 12B.10C relating to those investments. All contracts providing for the investment of public funds shall be in writing and shall contain a provision requiring that all investments shall be made in accordance with the laws of this state.

c. A contract for the investment or deposit of public funds shall not provide for compensation of an agent or fiduciary based upon investment per-

formance.

3. A treasurer of a political subdivision may invest funds of the political subdivision or agency that are not operating funds in investments having maturities longer than three hundred and ninety-seven days.

4. As used in this section, “*public funds*” means all funds that are public funds within the meaning of section 12C.1, subsection 2, paragraph “*b*”, except state funds invested by the treasurer of state.

5. This section shall not be construed to supersede any provision of this chapter or of chapter 12C.

6. The following entities are not subject to this section:

a. The public safety peace officers’ retirement system governed by chapter 97A.

b. The Iowa public employees’ retirement system governed by chapter 97B.

c. The Iowa finance authority governed by chapter 16.

d. The state board of regents. However, investments by the state board of regents or institutions governed by the state board of regents are limited to the following:

(1) Those investments set out in section 12B.10, subsection 4.

(2) The common fund for nonprofit organizations.

(3) Common stocks.

(4) For investments of short-term operating funds, the funds shall not be invested in investments having maturities exceeding sixty-three months.

e. A pension and annuity retirement system governed by chapter 294.

f. The statewide fire and police retirement system governed by chapter 411.

g. The judicial retirement system governed by chapter 602, article 9.

h. The deferred compensation plan established by the executive council pursuant to section 509A.12.

i. The tobacco settlement authority governed by chapter 12E.

7. A joint investment trust organized pursuant to chapter 28E whose primary function is to invest public funds shall report to the general assembly not later than January 1 of each year the amount of any trust royalty, residual payment, administrative or service fee, or other fee paid by the trust, the services performed for the fee, and the person receiving the fee.

Section not amended; footnote deleted

12B.10B Written investment policies.

1. Political subdivisions shall approve written investment policies which incorporate the guidelines specified in section 12B.10, sections 12B.10A through 12B.10C, and any other provisions deemed necessary to adequately safeguard in-

vested public funds.

2. The written investment policy required by section 12B.10 shall be delivered to all of the following:

- a. The governing body or officer of the public entity to which the policy applies.
 - b. All depository institutions or fiduciaries for public funds of the public entity.
 - c. The auditor of the public entity.
3. The following entities are not subject to this section:
- a. The public safety peace officers' retirement system governed by chapter 97A.
 - b. The Iowa public employees' retirement system governed by chapter 97B.
 - c. The Iowa finance authority governed by chapter 16.
 - d. The state board of regents governed by chapter 262.
 - e. A pension and annuity retirement system governed by chapter 294.
 - f. The statewide fire and police retirement system governed by chapter 411.
 - g. The judicial retirement system governed by chapter 602, article 9.
 - h. The deferred compensation plan established by the executive council pursuant to section 509A.12.
 - i. The tobacco settlement authority governed by chapter 12E.
 - j. Municipal utility retirement systems governed under chapter 412.

2001 Acts, ch 102, §2
Subsection 3, NEW paragraph j

12B.10C Regulation of public funds custodial agreements.

The treasurer of state, in consultation with the attorney general, shall adopt rules under chapter 17A requiring the inclusion in public funds custodial agreements of any provisions necessary to prevent loss of public funds.

As used in this section, "*public funds custodial agreement*" means any contractual arrangement

pursuant to which one or more persons, including but not limited to, investment advisors, investment companies, trustees, agents and custodians, are authorized to act as a custodian of or to designate another person to act as a custodian of public funds or any security or document of ownership or title evidencing public funds investments other than custodial agreements between an open-end management investment company registered with the federal securities and exchange commission under the federal Investment Company Act of 1940, 15 U.S.C. § 80(a) and a custodian bank.

As used in this section "*public funds*" means public funds as defined in section 12C.1. However, this section does not apply to public funds that are invested under the provisions of a resolution or indenture for the issuance of bonds, notes, certificates, warrants, or other evidences of indebtedness. To the extent that a provision of this section conflicts with federal law, it shall be construed to avoid the conflict.

The following entities are not subject to this section:

- 1. The public safety peace officers' retirement system governed by chapter 97A.
- 2. The Iowa public employees' retirement system governed by chapter 97B.
- 3. Investments by the Iowa finance authority governed by chapter 16.
- 4. A pension and annuity retirement system governed by chapter 294.
- 5. The statewide fire and police retirement system governed by chapter 411.
- 6. The judicial retirement system governed by chapter 602, article 9.
- 7. The deferred compensation plan established by the executive council pursuant to section 509A.12.
- 8. The tobacco settlement authority governed by chapter 12E.
- 9. Municipal utility retirement systems governed under chapter 412.

2001 Acts, ch 102, §3
NEW subsection 9

CHAPTER 12C

DEPOSIT OF PUBLIC FUNDS

12C.1 Deposits in general — definitions.

1. All funds held by the following officers or institutions shall be deposited in one or more depositories first approved by the appropriate governing body as indicated: for the treasurer of state, by the executive council; for judicial officers and court employees, by the supreme court; for the county treasurer, recorder, auditor, and sheriff, by the board of supervisors; for the city treasurer or other designated financial officer of a city, by the city council; for the county public hospital or

merged area hospital, by the board of hospital trustees; for a memorial hospital, by the memorial hospital commission; for a school corporation, by the board of school directors; for a city utility or combined utility system established under chapter 388, by the utility board; for a library service area established under chapter 256, by the library service area board of trustees; and for an electric power agency as defined in section 28F.2 or 476A.20, by the governing body of the electric power agency. However, the treasurer of state and the

treasurer of each political subdivision or the designated financial officer of a city shall invest all funds not needed for current operating expenses in time certificates of deposit in approved depositories pursuant to this chapter or in investments permitted by section 12B.10. The list of public depositories and the amounts severally deposited in the depositories are matters of public record. This subsection does not limit the definition of “public funds” contained in subsection 2. Notwithstanding provisions of this section to the contrary, public funds of a state government deferred compensation plan established by the executive council may also be invested in the investment products authorized under section 509A.12.

2. As used in this chapter unless the context otherwise requires:

a. “*Depository*” means a bank, a savings and loan, or a credit union in which public funds are deposited under this chapter.

b. “*Public funds*” and “*public deposits*” mean the moneys of the state or a political subdivision or instrumentality of the state including a county, school corporation, special district, drainage district, unincorporated town or township, municipality, or municipal corporation or any agency, board, or commission of the state or a political subdivision; any court or public body noted in subsection 1; a legal or administrative entity created pursuant to chapter 28E; an electric power agency as defined in section 28F.2 or 476A.20; and federal and state grant moneys of a quasi-public state entity that are placed in a depository pursuant to this chapter.

c. “*Bank*” means a corporation engaged in the business of banking authorized by law to receive deposits and whose deposits are insured by the bank insurance fund of the federal deposit insurance corporation and includes any office of a bank. “*Bank*” also means a savings and loan or savings association.

d. “*Savings and loan*” means a corporation authorized to operate under chapter 534 or the federal Home Owner’s Loan Act of 1933, 12 U.S.C. § 1461, et seq., and includes a savings and loan association, a savings bank, or any branch of a savings and loan association or savings bank.

e. “*Credit union*” means a cooperative, non-profit association incorporated under chapter 533 or the federal Credit Union Act, 12 U.S.C. § 1751, et seq., and that is insured by the national credit

union administration and includes an office of a credit union.

f. “*Financial institution*” means a bank or a credit union.

3. A deposit of public funds in a depository pursuant to this chapter shall be secured as follows:

a. If a depository is a credit union, then public deposits in the credit union shall be secured pursuant to sections 12C.16 through 12C.19 and sections 12C.23 and 12C.24.

b. If a depository is a bank, public deposits in the bank shall be secured pursuant to sections 12C.23A and 12C.24.

4. Ambiguities in the application of this section shall be resolved in favor of preventing the loss of public funds on deposit in a depository.

2001 Acts, ch 158, §4; 2001 Acts, 1st Ex, ch 4, §1, 2, 36
Subsection 1 amended
Subsection 2, paragraph b amended

12C.5 Refusal of deposits — procedure.

If the approved depositories will not accept the deposits under the conditions prescribed or authorized in this chapter, the funds may be deposited, on the same or better terms as were offered to the depositories, in one or more approved depositories conveniently located within the state.

The treasurer of state may invest in any of the investments authorized for the Iowa public employees’ retirement system in section 97B.7, subsection 2, paragraph “b” except that investment in common stocks shall not be permitted.

For future amendment effective July 1, 2002, see 2001 Acts, ch 68, §3, 24
Section not amended; footnote added

12C.10 Investment of funds created by election.

The governing council or board, who by law have control of any fund created by direct vote of the people, may invest any portion of the fund not currently needed, in investments authorized in section 12B.10. The treasurer of state may invest in any of the investments authorized for the Iowa public employees’ retirement system in section 97B.7, subsection 2, paragraph “b” except that investment in common stocks shall not be permitted. Interest or earnings on such funds shall be credited as provided in section 12C.7, subsection 2.

For future amendment effective July 1, 2002, see 2001 Acts, ch 68, §4, 24
Section not amended; footnote added

CHAPTER 12D

IOWA EDUCATIONAL SAVINGS PLAN TRUST

12D.4A Administrative fund — appropriation. Repealed by 2000 Acts, ch 1231, § 39; 2001 Acts, ch 24, § 72, 74.

CHAPTER 12E

TOBACCO SETTLEMENT AUTHORITY

Chapter repeal rescinded; 2000 Acts, ch 1208, §24, 25;
2001 Acts, ch 5, §1, 2; 2001 Acts, ch 164, §19, 21

12E.2 Definitions.

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

1. “*Authority*” means the tobacco settlement authority created in this chapter.

2. “*Board*” means the governing board of the authority.

3. “*Bonds*” means bonds, notes, and other obligations and financing arrangements issued or entered into by the authority pursuant to this chapter.

4. “*Financial institution*” means a bank or credit union as defined in section 12C.1.

5. “*Healthy Iowans tobacco trust*” means the healthy Iowans tobacco trust created in section 12.65.

6. “*Interest rate agreement*” means an interest rate swap or exchange agreement, an agreement establishing an interest rate floor or ceiling or both, or any similar agreement. Any such agreement may include the option to enter into or cancel the agreement or to reverse or extend the agreement.

7. “*Master settlement agreement*” means the master settlement agreement as defined in section 453C.1.

8. “*Net proceeds*” means the amount of proceeds remaining following each sale of bonds which are not required by the authority to establish and fund reserve funds and to pay the costs of issuance and other expenses and fees directly related to the authorization and issuance of bonds.

9. “*Notes*” means notes, warrants, loan agreements, and all other forms of evidence of indebtedness authorized under this chapter.

10. “*Program plan*” means the tobacco settlement program plan dated February 14, 2001, including exhibits to the program plan, submitted by the authority to the legislative council and the executive council, to provide the state with a secure and stable source of funding for the purposes designated by this chapter and section 12.65.

11. “*Qualified investments*” means investments of the authority authorized pursuant to this chapter.

12. “*Sales agreement*” means any agreement authorized pursuant to this chapter in which the state provides for the sale of all or a portion of the state’s share to the authority.

13. “*State’s share*” means all of the following:

a. All payments required to be made by tobacco product manufacturers to the state, and the state’s rights to receive such payments, under the master settlement agreement.

b. To the extent that such amounts have been assigned to the state, all payments of attorney fees required to be made by tobacco product manufacturers under the master settlement agreement, and all rights to receive such attorney fees.

14. “*Tax-exempt bonds*” means bonds issued by the authority that are accompanied by a written opinion of legal counsel to the authority that the bonds are excluded from the gross income of the recipients for federal income tax purposes.

15. “*Taxable bonds*” means bonds issued by the authority that are not accompanied by a written opinion of legal counsel to the authority that the bonds are excluded from the gross income of the recipients for federal income tax purposes.

16. “*Tobacco settlement trust fund*” means the tobacco settlement trust fund created in this chapter.

2001 Acts, ch 164, §2 – 5, 21

NEW subsections 5 and 6 and former subsection 5 renumbered as 7

NEW subsection 8 and former subsections 6 and 7 renumbered as 9 and

10

Subsection 10 amended

Subsection 11 stricken and former subsections 8 – 10 renumbered as 11

– 13

Subsections 11 and 13 amended

NEW subsections 14 and 15

Former subsection 12 renumbered as 16

12E.3 Tobacco settlement authority — created — purposes — powers — restrictions.

1. A tobacco settlement authority is created and constitutes a public instrumentality and agency of the state, separate and distinct from the state, exercising public and essential governmental functions.

2. The purposes of the authority include all of the following:

a. To implement and administer the program plan and to establish a stable source of revenue to be used for the purposes designated in this chapter and section 12.65.

b. To enter into sales agreements.

c. To issue bonds and enter into funding options, consistent with this chapter, including re-funding and refinancing its debt and obligations.

d. To sell, pledge, or assign, as security or consideration, all or a portion of the state’s share sold to the authority pursuant to a sales agreement, to provide for and secure the issuance and repayment of its bonds.

e. To invest funds available under this chapter to provide for a source of revenue in accordance with the program plan.

f. To enter into agreements with the state for the periodic distribution of amounts due the state

under any sales agreement.

g. To refund and refinance the authority's debts and obligations, and to manage its funds, obligations, and investments as necessary and if consistent with its purpose.

h. To sell, pledge, or assign, as security or consideration, all or a portion of the state's share to implement alternative funding options.

i. To implement the purposes of this chapter.

3. The authority shall invest its funds and accounts in accordance with this chapter and shall not take action or invest in any manner that would cause the state to become a stockholder in any corporation or that would cause the state to assume or agree to pay the debt or liability of any corporation in violation of the United States Constitution or the Constitution of the State of Iowa.

4. The authority shall not create any obligation of this state or any political subdivision of this state within the meaning of any constitutional or statutory debt limitation.

5. The authority shall not pledge the credit or taxing power of this state or any political subdivision of this state, or make its debts payable out of any moneys except those of the authority specifically pledged for their payment.

6. The authority shall not pledge or make its debts payable out of the moneys deposited in the tobacco settlement trust fund.

2001 Acts, ch 164, §6, 21
Subsection 2, paragraphs a and d amended

12E.8 General powers.

1. The authority has all the general powers necessary to carry out its purposes and duties and to exercise its specific powers, including but not limited to all of the following powers:

a. The power to issue its bonds and to enter into other funding options as provided in this chapter.

b. The power to have perpetual succession as a public instrumentality and agency of the state, until dissolved in accordance with this chapter.

c. The power to sue and be sued in its own name.

d. The power to make and execute agreements, contracts, and other instruments, with any public or private person, in accordance with this chapter.

e. The power to hire and compensate legal counsel, notwithstanding chapter 13.

f. The power to hire investment advisors and other persons as necessary to fulfill its purpose.

g. The power to invest or deposit moneys of or held by the authority in any manner determined by the authority, notwithstanding chapter 12B or 12C.

h. The power to procure insurance, other credit enhancements, and other financing arrangements, and to execute instruments and contracts and to enter into agreements convenient or necessary to facilitate financing arrangements of the

authority and to fulfill the purposes of the authority under this chapter, including but not limited to such arrangements, instruments, contracts, and agreements as municipal bond insurance, liquidity facilities, interest rate agreements, and letters of credit.

i. The power to accept appropriations, gifts, grants, loans, or other aid from public or private entities.

j. The power to adopt rules, consistent with this chapter and in accordance with chapter 17A, as the board determines necessary.

k. The power to acquire, own, hold, administer, and dispose of property.

l. The power to determine, in connection with the issuance of bonds, and subject to the sales agreement, the terms and other details of financing, and the method of implementation of the program plan.

m. The power to perform any act not inconsistent with federal or state law necessary to carry out the purposes of the authority.

2. The authority is exempt from the requirements of chapter 18.

2001 Acts, ch 164, §7, 8, 21
Subsection 1, paragraphs g and h amended and NEW paragraphs k – m

12E.9 Authorization of the sale of rights in the master settlement agreement.

1. *a.* The governor or the governor's designee shall sell and assign all or a portion of the state's share to the authority pursuant to one or more sales agreements for the purpose of securitization as described in the program plan and as specified in section 12E.10. The attorney general shall assist the governor in the preparation and review of all necessary documentation to effect such a sale as soon as reasonably practicable.

b. Any sales agreement shall be consistent with the program plan and this chapter. The terms and conditions of the sale established in such sales agreement may include but are not limited to any of the following:

(1) A requirement that the state enforce, at the sole expense of the authority, the provisions of the master settlement agreement that require payment of the state's share that has been sold to the authority under a sales agreement.

(2) A requirement that the state not agree to any amendment of the master settlement agreement that materially and adversely affects the authority's ability to receive the state's share that has been sold to the authority.

(3) An agreement that the anticipated use by the state of bond proceeds received pursuant to the sales agreement shall be for capital projects, certain debt service on outstanding obligations that funded capital projects, payment of attorney fees related to the master settlement agreement, and to provide a secure and stable source of funding to the state for purposes designated by this chapter and section 12.65.

(4) A statement that the net proceeds from the sale of bonds shall be deposited in the tobacco settlement trust fund established under section 12E.12 and that in no event shall the amounts in the trust fund be available or be applied for payment of bonds or any claim against the authority or any debt or obligation of the authority.

(5) A requirement that the net proceeds received by the authority from the sale of any tax-exempt bonds issued to provide funds for capital projects, certain debt service, and attorney fees related to the master settlement agreement be paid by the authority to the state as consideration for the sale of that portion of the state's share, that such net proceeds be deposited by the state upon receipt in the tax-exempt bond proceeds restricted capital funds account of the tobacco settlement trust fund, and that such proceeds are to be held by the authority solely for the benefit of the state, subject to annual appropriation by the state in accordance with section 12E.10, subsection 1, paragraph "b".

(6) A requirement that the net proceeds received by the authority from the sale of taxable bonds or tax-exempt bonds issued to provide funds for the purposes specified in section 12.65 be deposited in the endowment for Iowa's health account of the tobacco settlement trust fund as moneys of the authority until transferred to the state pursuant to section 12E.12, subsection 1, paragraph "b", subparagraph (2). Each amount transferred shall be the consideration received by the state for that portion of the state's share.

(7) An agreement that the effective date of the sale is the date of receipt of the bond proceeds by the authority and the deposits of the net proceeds of the tax-exempt bonds and any taxable bonds in the respective accounts of the tobacco settlement trust fund.

2. The sale made under this section shall be irrevocable during the time when bonds are outstanding under this chapter, and shall be a part of the contractual obligation owed to the bondholders. The sale shall constitute and be treated as a true sale and absolute transfer of the property so transferred and not as a pledge or other security interest for any borrowing. The characterization of such a sale as an absolute transfer shall not be negated or adversely affected by the fact that only a portion of the state's share is being sold, or by the state's acquisition or retention of an ownership interest in the residual assets.

3. On or after the effective date of such sale, the state shall not have any right, title, or interest in the portion of the master settlement agreement sold and such portion shall be the property of the authority and not the state, and shall be owned, received, held, and disbursed by the authority or its trustee or assignee, and not the state.

4. On or before the effective date of the sale, the state shall notify the escrow agent under the

master settlement agreement of the sale and shall instruct the escrow agent that subsequent to that date, all payments constituting the portion sold shall be made directly to the authority.

5. The authority, the treasurer of state, and the attorney general shall report to the legislative council and the executive council on or before the date of the sale, advising them of the status of the sale, its terms, and conditions.

2001 Acts, ch 164, §9, 10, 21
Deposit of state's share in healthy Iowans tobacco trust under §12.65 until effective date of sale; 2001 Acts, ch 164, §20
Subsection 1 stricken and rewritten
Subsection 5 amended

12E.10 Tobacco settlement program plan.

1. *a.* (1) The authority shall implement the program plan and shall proceed with a securitization to maximize the transference of risks associated with the master settlement agreement.

(2) The authority shall issue tax-exempt bonds in an amount that is sufficient to provide net proceeds in an amount of not more than five hundred forty million dollars for deposit in the tax-exempt bond proceeds restricted capital funds account of the tobacco settlement trust fund, to be used for capital projects, certain debt service on outstanding obligations which funded capital projects, and attorney fees related to the master settlement agreement.

(3) The authority may also issue taxable bonds or tax-exempt bonds to provide additional amounts to be used for the purposes specified in section 12.65.

(4) Notwithstanding subparagraphs (1) and (2), the authority is not required to issue tax-exempt bonds if the authority determines that the issuance would not be in the best interest of the state due to market conditions.

b. It is the expectation of the state that not less than eighty-five percent of the proceeds deposited in the tax-exempt bond proceeds restricted capital funds account of the tobacco settlement trust fund will be expended within five years from the effective date of the sale, consistent with the requirements of federal law, and that the specific capital projects, debt service, and attorney fees payments shall be determined annually through appropriations authorized by a constitutional majority of each house of the general assembly and approved by the governor.

2. The authority shall periodically report to the legislative council and the governor regarding implementation of the program plan and shall, prior to any public offering of bonds, submit a report to the legislative council and the governor describing the terms of the proposed bond issue.

3. Any amendment to the program plan shall be authorized by a constitutional majority of each house of the general assembly and approved by the governor.

4. To the extent that any provision of the pro-

gram plan is inconsistent with this chapter, the provisions of this chapter shall govern.

2001 Acts, ch 164, §11, 21
Section stricken and rewritten

12E.11 Authority — bonds.

1. The authority may issue bonds and, if bonds are issued, shall make the proceeds from the bonds available to the state pursuant to the sales agreement to fund capital projects, certain debt service on outstanding obligations that funded capital projects, and attorney fees related to the master settlement agreement, and to provide a secure and stable source of funding to the state, consistent with the purposes of this chapter and section 12.65. In connection with the issuance of bonds and subject to the terms of the sales agreement, the authority shall determine the terms and other details of the financing and the method of implementation of the program plan. Bonds issued pursuant to this section may be secured by a pledge of all or a portion of the state's share and any moneys derived from the state's share, and any other sources available to the authority with the exception of moneys in the tobacco settlement trust fund. The authority may also issue refunding bonds, including advance refunding bonds, for the purpose of refunding previously issued bonds, and may issue other types of bonds, debt obligations, and financing arrangements necessary to fulfill its purposes or the purposes of this chapter.

2. The authority may issue its bonds in principal amounts which, in the opinion of the authority, are necessary to provide sufficient funds for achievement of its purposes, the payment of interest on its bonds, the establishment of reserves to secure the bonds, the costs of issuance of its bonds, and all other expenditures of the authority incident to and necessary to carry out its purposes or powers. The bonds are investment securities and negotiable instruments within the meaning of and for the purposes of the uniform commercial code.

3. Bonds issued by the authority are payable solely and only out of the moneys, assets, or revenues pledged by the authority and are not a general obligation or indebtedness of the authority or an obligation or indebtedness of the state or any subdivision of the state. The authority shall not pledge the credit or taxing power of the state or any political subdivision of the state, or create a debt or obligation of the state, or make its debts payable out of any moneys except those of the authority, excluding those moneys deposited in the tobacco settlement trust fund.

4. Bonds shall state on their face that they are payable both as to principal and interest solely out of the assets of the authority pledged for their purpose and do not constitute an indebtedness of the state or any political subdivision of the state; are secured solely by and payable solely from assets of the authority pledged for such purpose; constitute

neither a general, legal, or moral obligation of the state or any of its political subdivisions; and that the state has no obligation or intention to satisfy any deficiency or default of any payment of the bonds.

5. Any amount pledged by the authority to be received under the master settlement agreement shall be valid and binding at the time the pledge is made. Amounts so pledged and then or thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act. The lien of any such pledge shall be valid and binding as against all parties having claims of any kind against the authority, whether such parties have notice of the lien. Notwithstanding any other provision to the contrary, the resolution of the authority or any other instrument by which a pledge is created need not be recorded or filed to perfect such pledge.

6. The proceeds of bonds issued by the authority and not required for deposit in the tobacco settlement trust fund may be invested in any manner approved by the board and specified in the trust indenture or resolution pursuant to which the bonds must be issued, notwithstanding any other provision to the contrary.

7. The bonds shall comply with all of the following:

a. The bonds shall be in a form, issued in denominations, executed in a manner, and payable over terms and with rights of redemption, as the board prescribes in the resolution authorizing their issuance.

b. The bonds shall be fully negotiable instruments under the laws of this state and may be sold at prices, at public or private sale, and in a manner as prescribed by the board. Chapters 73A, 74, 74A, and 75 shall not apply to the sale or issuance of bonds under this chapter.

c. The bonds shall be subject to the terms, conditions, and covenants providing for the payment of the principal, redemption premiums, if any, interest which may be fixed or variable during any period the bonds are outstanding, and other terms, conditions, covenants, and protective provisions safeguarding payment, not inconsistent with this chapter and as determined by resolution of the board authorizing their issuance.

8. The bonds issued under this chapter are securities in which insurance companies and associations and other persons engaged in the business of insurance; 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.

9. Bonds must be authorized by a resolution of the board. However, a resolution authorizing the

issuance of bonds may delegate to an officer of the authority the power to negotiate and fix the details of an issue of bonds by an appropriate certificate of the authorized officer.

10. To comply with federal law with respect to the issuance of bonds, the interest of which is tax-exempt pursuant to the Internal Revenue Code, the authority may issue a certain series of bonds, or periodically issue several series of bonds, so that interest on the bonds remains exempt from federal taxation or to comply with the purposes specified in this chapter.

11. The state reserves the right at any time to alter, amend, repeal, or otherwise change the structure, organization, programs, or activities of the authority, including the power to terminate the authority, except that a law shall not be enacted that impairs any obligation made pursuant to a sales agreement or any contract entered into by the authority with or on behalf of the holders of the bonds to the extent that any such law would contravene Article I, section 21, of the Constitution of the State of Iowa or Article I, section 10, of the Constitution of the United States.

2001 Acts, ch 164, §12 – 14, 21
Subsections 1, 4, and 5 amended
Subsection 7, paragraph c amended
NEW subsection 11

12E.12 Tobacco settlement trust fund — established — investment — liability.

1. *a.* A tobacco settlement trust fund is established, separate and apart from all other public moneys or funds of the state, under the control of the authority. The fund shall consist of moneys paid to the authority and not pledged to the payment of bonds or otherwise obligated. Such moneys shall include but are not limited to payments received from the master settlement agreement which are not pledged to the payment of bonds or which are subsequently released from a pledge to the payment of any bonds; payments which, in accordance with any sales agreement with the state, are to be paid to the state and not pledged to the bonds, including that portion of the proceeds of any bonds designated for purchase of all or a portion of the state's share, which are designated for deposit in the fund, together with all interest, dividends, and rents on the bonds; and all securities or investment income and other assets acquired by and through the use of the moneys belonging to the fund and any other moneys deposited in the fund. Moneys in the fund are to be used solely and only for the payment of all amounts due and to become due to the state, and shall not be used for any other purpose. Such moneys shall not be available for the payment of any claim against the authority or any debt or obligation of the authority.

b. The fund shall consist of the following accounts:

(1) The tax-exempt bond proceeds restricted capital funds account. The net proceeds of tax-

exempt bonds issued to provide funds for capital projects, certain debt service, and attorney fees related to the master settlement agreement which the state treasurer is authorized and directed to deposit on behalf of the state shall be deposited in the account and shall be used to fund capital projects, certain debt service, and the payment of attorney fees related to the master settlement agreement. With respect to capital projects, it is the intent of the general assembly to fund capital projects that qualify as vertical infrastructure projects as defined in section 8.57, subsection 5, paragraph "c", to the extent practicable in any fiscal year and without limiting other qualifying capital expenditures considered and approved by a constitutional majority of each house of the general assembly and the governor.

(2) The endowment for Iowa's health account. The net proceeds of any taxable bonds or tax-exempt bonds issued to provide funds for the purposes specified in section 12.65 which the authority is directed to deposit in the account, any portion of the state's share which is not sold to the authority, and any other moneys appropriated by the state for deposit in the account shall be deposited in the account and shall be used for the purposes specified in section 12.65.

(a) There is transferred from the endowment for Iowa's health account of the tobacco settlement trust fund to the healthy Iowans tobacco trust for the fiscal year beginning July 1, 2001, and ending June 30, 2002, the amount of fifty-five million dollars, to be used for the purposes specified in section 12.65.

(b) For each fiscal year beginning July 1, 2002, and annually thereafter, there is transferred from the endowment for Iowa's health account of the tobacco settlement trust fund to the healthy Iowans tobacco trust fifty-five million dollars plus an inflationary factor of one and one-half percent of the amount transferred in the previous fiscal year. Any transfer in an amount not in accordance with this subparagraph shall not be made unless authorized by a three-fifths majority of each house and approved by the governor.

2. The treasurer of the authority shall act as custodian and trustee of the fund and shall administer the fund as directed by the authority. The treasurer of the authority shall do all of the following:

a. Hold the funds.

b. Invest the portion of the funds which, as deemed by the authority, is not necessary for current payment of sums to the state under this chapter or the program plan.

c. Disburse funds, if directed by the authority.

d. Sell any securities or other property held by the fund and reinvest the proceeds as directed by the authority, when deemed advisable by the authority for the protection of the fund or the preservation of the value of the investment. Such sale

of securities or other property held by the fund shall only be made with the advice of the board in the manner and to the extent provided in this chapter with regard to the purchase of investments.

e. Subscribe, at the direction of the authority, for the purchase of securities for future delivery in anticipation of future income. Such securities shall be paid for by such anticipated income or from funds from the sale of securities or other property held by the fund.

f. Pay for securities, as directed by the authority, on the receipt of the purchasing entity's paid statement or paid confirmation of purchase.

3. The authority shall execute the disposition and investment of moneys in the fund in accordance with the investment policy and goal statement established by the board.

a. In establishing the investment policy and goal statement of the fund, the standard utilized by the board shall be the exercise of judgment and care, under the prevailing circumstances, which persons of prudence, discretion, and intelligence exercise in the management of their own financial affairs, not for the purpose of speculation, but with regard to the permanent disposition of the funds, considering the probable income, as well as the probable safety, of their capital.

b. Within the limitations of the standard prescribed in this subsection and the program plan, the treasurer of the authority, the authority, and the board may acquire and retain any type of property or investment which persons of prudence, discretion, and intelligence would acquire or retain for their own financial interests.

c. The authority and the board shall give appropriate consideration to those facts and circumstances that the authority and board know or should know are relevant to the particular investment or investment policy involved, including the role the investment plays in the total value of the fund. For the purposes of this paragraph, "appropriate consideration" includes, but is not limited to, a determination by the authority and the board that the particular investment or investment policy is reasonably designed to further the purposes of the tobacco settlement program plan, taking into consideration the risk of loss and the opportunity for gain or other return associated with the investment or investment policy and consideration of all of the following as they relate to the tobacco settlement trust fund:

(1) The composition of the fund with regard to diversification.

(2) The liquidity and current return of the investments in the fund relative to the anticipated cash flow requirements of the program plan.

(3) The projected return of the investments relative to the funding objectives of the program plan.

d. Investments of moneys in the funds are not subject to sections 73.15 through 73.21.

e. If consistent with the investment policy established by the board, the authority may invest moneys of or held by the authority in structured notes and investment agreements, the repayment of the principal amount of which is protected or guaranteed.

4. The authority, its staff, members of the board, and the treasurer of the authority are not personally liable for actions or omissions under this chapter that do not involve malicious or wanton misconduct even if those actions or omissions violate the standards established in this section.

5. Except as provided in this section, if there is loss to the fund, the treasurer, the authority, the board, and the staff are not personally liable, and the loss shall be charged against the fund. The amount required to cover a loss may be paid from the fund.

6. a. Expenses incurred in the sale and purchase of securities belonging to the fund shall be charged to the fund, and the amount required for the investment management expenses may be paid from the fund, subject to the limitations stated in this subsection. The amount paid for investment management expenses for a fiscal year under this section shall not exceed the reasonable and customary charge to similar funds for similar purposes. The authority shall report the investment management expenses for a fiscal year as a percent of the market value of the fund in the annual report to the governor submitted pursuant to section 12E.15.

b. A person who has entered into a contract with the authority for investment management purposes shall meet the requirements for doing business in Iowa sufficient to be subject to taxation under the rules of the department of revenue and finance.

7. All moneys paid to or deposited in the fund are available to the authority to be used for the exclusive purpose of the program plan in accordance with this chapter, including but not limited to all of the following:

a. For payment of amounts due to the state pursuant to the terms of the sales agreements entered into between the state and the authority.

b. For payment of other amounts provided for in the program plan.

c. For payment of the costs of administering the program plan and the costs of the authority.

2001 Acts, ch 164, §15, 16, 21
Contingent appropriation of state general fund moneys; 2001 Acts, ch 174, §1 - 3; 2001 Acts, 2nd Ex, ch 6, §1, 37
Subsection 1 amended
Subsection 3, NEW paragraph e

12E.13 Moneys of the authority.

1. Moneys of the authority, except as otherwise provided in this chapter or specified in a trust indenture or resolution pursuant to which the bonds are issued, shall be paid to the authority and shall be deposited in a financial institution designated by the authority. The moneys shall be with-

drawn on the order of the authority or its designee. Deposits shall be secured in the manner determined by the authority.

2. The auditor of state or the auditor's designee, which may include a person hired by the auditor with the approval of the board, may periodically examine the accounts and books, including its receipts, disbursements, contracts, leases, sinking funds, investments, and any other records and papers relating to its financial standing. The authority shall pay the costs of any such examination.

3. The authority may contract with the holders of its bonds relating to the custody, collection, security, investment, and payment of moneys of the authority, and relating to the moneys held in trust or otherwise for payment of bonds, with the exception of moneys in the tobacco settlement trust fund. Moneys held in trust or otherwise for the payment of bonds or in any way to secure bonds and deposits of the moneys may be secured in the same manner as moneys of the authority, and financial institutions and trust companies may provide security for the deposits.

4. The authority shall submit to the governor, the attorney general, the auditor of state, the department of management, and the legislative fiscal bureau, within thirty days of its receipt, a copy of the report of every external examination of the books and accounts of the authority, other than copies of the reports of examinations of the auditor of state.

5. All moneys of the authority or moneys held by the authority shall be invested and held in the name of the authority, whether they are held for the benefit, security, or future payment to holders of bonds or to the state. All such moneys and investments shall be considered moneys and investments of the authority with the exception of moneys in the tax-exempt bond proceeds restricted capital funds account of the tobacco settlement trust fund which are moneys of the state.

2001 Acts, ch 164, §17, 21
Subsection 5 amended

12E.17 Dissolution of the authority.

The authority shall dissolve no later than two years from the date of final payment of all outstanding bonds and the satisfaction of all outstanding obligations of the authority, except to the extent necessary to remain in existence to fulfill any outstanding covenants or provisions with bondholders or third parties made in accordance with this chapter. Upon dissolution of the authority, all assets of the authority shall be returned to the state and shall be deposited in the healthy Iowans tobacco trust, unless otherwise directed by the general assembly, and the authority shall execute any necessary assignments or instruments, including any assignment of any right, title, or ownership to the state for receipt of payments under the master settlement agreement.

2001 Acts, ch 164, §18, 21
Section amended

CHAPTER 14B

INFORMATION TECHNOLOGY DEPARTMENT

Appropriations; pooled technology account;
2000 Acts, ch 1226, §4, 5, 28;
2001 Acts, ch 189, §4, 5, 12, 13, 15, 18

14B.101 Definitions.

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

1. "Agency" means a unit of state government, which is an authority, board, commission, committee, council, department, examining board, or independent agency as defined in section 7E.4, including but not limited to each principal central department enumerated in section 7E.5. However, "agency" does not mean any of the following:

a. The office of the governor or the office of an elective constitutional or statutory officer.

b. The general assembly, or any office or unit under its administrative authority.

c. The judicial branch, as provided in section 602.1102.

d. A political subdivision of the state or its offices or units, including but not limited to a county, city, or community college.

2. "Director" means the director of the infor-

mation technology department appointed as provided in section 14B.104.

3. "Governmental entity" means any unit of government in the executive, legislative, or judicial branch of government; an agency or political subdivision; any unit of another state government, including its political subdivisions; or any unit of the United States government.

4. "Information technology" means computing and electronics applications used to process and distribute information in digital and other forms and includes information technology devices and information technology services.

5. "Information technology council" means the information technology council established in section 14B.105.

6. "Information technology device" means equipment or associated software, including programs, languages, procedures, or associated documentation, used in operating the equipment

which is designed for utilizing information stored in an electronic format. “*Information technology device*” includes but is not limited to computer systems, computer networks, and equipment used for input, output, processing, storage, display, scanning, and printing.

7. “*Information technology services*” means services designed to do any of the following:

a. Provide functions, maintenance, and support of information technology devices.

b. Provide services including, but not limited to, any of the following:

(1) Computer systems application development and maintenance.

(2) Systems integration and interoperability.

(3) Operating systems maintenance and design.

(4) Computer systems programming.

(5) Computer systems software support.

(6) Planning and security relating to information technology devices.

(7) Data management consultation.

(8) Information technology education and consulting.

(9) Information technology planning and standards.

(10) Establishment of local area network and workstation management standards.

8. “*Participating agency*” means any agency other than any of the following:

a. The state board of regents and institutions operated under the authority of the state board of regents.

b. The public broadcasting division of the department of education.

c. The state department of transportation mobile radio network.

d. The department of public safety law enforcement communications systems.

e. The Iowa telecommunications and technology commission established in section 8D.3, with respect to information technology that is unique to the Iowa communications network.

9. “*Public records*” means the same as defined in section 22.1.

10. “*Value-added services*” means government information which requires special sorts or formatting, or other action to provide such information, or to provide access to government information which is responsive to special requests for multiple government records in customized formats.

2001 Acts, ch 24, §10
Subsection 3 amended

14B.102 Department established — mission — powers and duties.

1. *Department established.* The information technology department is established as a state department. The mission of the department is to foster the development and application of information technology to improve the lives of Iowans.

2. *Powers and duties of department.* The powers and duties of the department shall include, but are not limited to, all of the following:

a. Providing information technology to participating agencies and other governmental entities as provided in this chapter.

b. Implementing the strategic information technology plan as prepared and updated by the information technology council.

c. Developing and implementing a business continuity plan, as the director determines is appropriate, to be used if a disruption occurs in the provision of information technology to participating agencies and other governmental entities.

d. Developing and implementing recommended standards for information technology, including but not limited to system design and systems integration and interoperability, which when implemented shall apply to all participating agencies except as otherwise provided in this chapter. The department shall implement information technology standards as established pursuant to this chapter which are applicable to information technology procurements for participating agencies.

e. Recommending and implementing standards for an electronic repository for maintaining mandated agency reports as provided in section 304.13A. Such repository shall be developed and maintained for the purpose of providing public access to such mandated reports. The department shall develop such standards in consultation with the state librarian.

f. Developing and maintaining security policies and systems to ensure the integrity of the state’s information resources and to prevent the disclosure of confidential records.

g. Developing and implementing effective and efficient strategies for the use and provision of information technology for participating agencies and other governmental entities.

h. Coordinating the acquisition of information technology by participating agencies in furtherance of the purposes of this chapter. The information technology department shall review a request for information technology submitted by a participating agency for purposes of determining whether such request meets the applicable standards established pursuant to this chapter. Upon a determination that the request meets such standards, the information technology shall be procured for the participating agency by the department of general services. Nothing in this chapter shall be construed to prohibit or limit a participating agency from entering into an agreement or contract for information technology with a qualified private entity.

i. Entering into agreements pursuant to chapter 28D or 28E, or memorandums of understanding or other agreements as necessary and appropriate to administer this chapter.

j. Establishing and maintaining, in cooper-

ation with the department of revenue and finance and the department of general services, an inventory of information technology devices used by participating agencies and other governmental entities using the information technology department's services. The information technology department may request a participating agency to provide such information as is necessary to establish and maintain an inventory as required under this paragraph, and such participating agency shall provide such information to the department in a timely manner.

k. Receiving and accepting donations, gifts, and contributions in the form of money, services, materials, or otherwise, from the United States or any of its agencies, from this state or any of its agencies, or from any other person, and to using or expending such moneys, services, materials, or other contributions in carrying on information technology operations.

l. Charging a negotiated fee, to recover a share of the costs related to the research and development, initial production, and derivative products of the department's proprietary software and hardware, information technology architecture design, and proprietary technology applications developed to support authorized users, to private vendors and to other political entities and subdivisions, including but not limited to states, territories, protectorates, and foreign countries. The department may enter into nondisclosure agreements to protect the state of Iowa's proprietary interests. The provisions of chapter 23A relating to noncompetition by state agencies and political subdivisions with private enterprise shall not apply to department activities authorized under this paragraph.

3. *Service charges.* The department shall render a statement to a participating agency or other governmental entity for a reasonable and necessary amount for information technology provided by the department to such agency or entity. An amount indicated on a statement rendered to a participating agency or other governmental entity shall be paid by such agency or entity in a manner determined by the department of revenue and finance. Amounts charged and paid pursuant to this subsection shall be deposited in the operations revolving fund created in section 14B.103.

4. *Dispute resolution.* If a dispute arises between the department or information technology council and an agency for which the department provides or refuses to provide information technology, the dispute shall be resolved as provided in section 679A.19.

2001 Acts, ch 70, §1

Review of operations of Iowa communications network and information technology department, see 2000 Acts, ch 1141, §17, 19
Subsection 2, NEW paragraphs k and l

14B.105 Information technology council — members — powers and duties.

1. Membership.

a. An information technology council is established with the authority to oversee the department and information technology activities of participating agencies as provided in this chapter. The information technology council is composed of seventeen members including the following:

(1) The director of the information technology department.

(2) The administrator of the public broadcasting division of the department of education.

(3) The chairperson of the LowAccess advisory council established in section 14B.201, or the chairperson's designee.

(4) The state technology advisor in the department of economic development.

(5) The executive director of the Iowa communications network, or the executive director's designee.

(6) Two executive branch department heads appointed by the governor.

(7) Five persons appointed by the governor who are knowledgeable in information technology matters.

(8) One person representing the judicial branch appointed by the chief justice of the supreme court who shall serve in an ex officio, nonvoting capacity.

(9) Four members of the general assembly with not more than one member from each chamber being from the same political party. The two senators shall be designated by the president of the senate after consultation with the majority and minority leaders of the senate. The two representatives shall be designated by the speaker of the house of representatives after consultation with the majority and minority leaders of the house of representatives. Legislative members shall serve in an ex officio, nonvoting capacity. A legislative member is eligible for per diem and expenses as provided in section 2.10.

b. The members appointed by the governor pursuant to paragraph "a", subparagraphs (3) through (7), shall serve four-year staggered terms as designated by the governor and such appointments to the information technology council are subject to the requirements of sections 69.16, 69.16A, and 69.19. Members appointed by the governor pursuant to paragraph "a", subparagraphs (3) through (7), shall not serve consecutive four-year terms. Members appointed by the governor are subject to senate confirmation and shall be reimbursed for actual and necessary expenses incurred in performance of their duties. Such members may also be eligible to receive compensation

as provided in section 7E.6.

The information technology council shall annually elect its own chairperson from among the voting members of the council other than the director of the information technology department.

2. *Duties.* The information technology council shall do all of the following:

a. Adopt rules in accordance with chapter 17A which are necessary for the exercise of the powers and duties granted by this chapter and the proper administration of the department.

b. Develop recommended standards for consideration with respect to the procurement of information technology by all participating agencies.

c. Appoint advisory committees as appropriate to assist the information technology council in developing strategies for the use and provision of information technology and establishing other advisory committees as necessary to assist the information technology council in carrying out its duties under this chapter. The number of advisory committees and their membership shall be determined by the information technology council to assure that the public and agencies and other governmental entities have an opportunity to comment on the services provided and the service goals and objectives of the department.

d. Prepare and annually update a strategic information technology plan for the use of information technology throughout state government. The plan shall promote participation in cooperative projects with other governmental entities. The plan shall establish a mission, goals, and objectives for the use of information technology, including goals for electronic access to public records, information, and services. The plan shall be submitted annually to the governor and the general assembly.

e. Review and recommend to the general assembly, as deemed appropriate by the information technology council, legislative proposals recommended by the director, or other legislative proposals as developed and deemed necessary by the information technology council.

f. Review the recommendations of the IowaAccess advisory council regarding rates to be charged for access to and for value-added services performed through IowaAccess. The information technology council shall report the establishment of a new rate or change in the level of an existing rate to the department of management, and the department of management shall notify the legislative fiscal bureau regarding the rate establishment or change.

g. Review and approve, as deemed appropriate by the information technology council, the annual budget recommendation for the department as proposed by the director.

3. *Waiver.* The information technology council, upon the written request of a participating

agency and for good cause shown, may grant a waiver from a requirement otherwise applicable to a participating agency relating to an information technology standard established by the information technology council.

4. *Final agency action.* A decision by the council is a final agency action as provided under chapter 17A and an appeal of the decision shall be made directly to the district court. Any party to a contested case may appeal the decision to the district court.

2001 Acts, ch 189, §7
Subsection 2, paragraph f amended

14B.109 Procurement of information technology.

1. Notwithstanding the provisions of this section, the information technology department and the department of general services shall enter into an interagency agreement regarding the division of responsibilities between the departments associated with the procurement of information technology which is acceptable to both departments. The interagency agreement shall be subject to renegotiation at least every two years, unless an earlier time is provided for in the interagency agreement. If the departments are unable to agree on the terms of an interagency agreement or upon a failure of either department to satisfy the terms of the agreement, the departments shall inform the department of management that an agreement has not been reached or that one of the departments has failed to satisfy the terms of the agreement. The department of management, upon receipt and review of such information, may direct the information technology department to proceed with the procurement of information technology as provided in subsections 2 through 5.

2. a. Standards established by the information technology council, unless waived pursuant to section 14B.105, shall apply to all information technology procurements for participating agencies.

b. A participating agency shall submit a request to the department for the procurement of any information technology. The department, prior to any acquisition of such information technology, shall make a determination whether the requested information technology complies with the information technology standards established by the information technology council.

The information technology department, at the request of a participating agency other than a participating agency that is granted independent procurement authority, shall acquire the information technology for the participating agency requesting such information technology if it is determined to be compliant with the standards established by the information technology council.

A participating agency that is granted indepen-

dent procurement authority, upon a determination by the information technology department that a proposed information technology acquisition complies with the information technology standards established by the information technology council, may proceed with such acquisition. The information technology department shall provide advice to such participating agency regarding the procurement of such information technology, including any opportunity to aggregate such purchases with other participating agencies.

c. If a determination is made that the information technology does not comply with such standards, the department shall disapprove the request and such information technology shall not be procured unless a waiver is granted pursuant to section 14B.105.

3. The information technology department, by rule, may implement a prequalification procedure for contractors with which the department has entered or intends to enter into agreements regarding the procurement of information technology.

4. Notwithstanding the provisions of chapter 18, the department may procure information technology as provided in this section. The department may cooperate with other governmental entities in the procurement of information technology in an effort to make such procurements in a cost-effective, efficient manner as provided in this section. The department, as deemed appropriate and cost-effective, may procure information technology using any of the following methods:

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

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

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

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

(3) The contract is with a vendor which has a current exclusive or nonexclusive price agreement

with the state for the information technology to be procured, and such information technology meets the same standards and specifications as the items to be procured and both of the following apply:

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

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

c. *Contracts let by another government entity.* The department, on its own behalf or on the behalf of another participating agency, may procure information technology under a contract let by another state agency or political subdivision of this state, or approve such procurement in the same manner by a participating agency.

d. *Reverse auction.*

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

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

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

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

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

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

(3) The department shall enter into an agreement with a vendor who is the lowest responsible bidder which meets the specifications or description of the information technology to be procured, or the department may reject all bids and begin the process again. In determining the lowest responsible bidder, the department may consider various factors, including, but not limited to, the past performance of the vendor relative to quality of product or service, the past experience of the department 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 state.

e. *Competitive bidding.* The department may enter into an agreement for the purchase of information technology in the same manner as provided under section 18.6, with respect to the department of general services.

f. Other agreements. In addition to the competitive bidding procedure provided for under paragraph “e”, the information technology department may enter into an agreement for the purchase, disposal, or other disposition of information technology in any other manner provided under chapter 18, in the same manner and subject to the same limitations as the department of general services. The information technology department, by rule, shall provide for such procedures.

5. The department shall adopt rules pursuant to chapter 17A to implement the procurement methods and procedures provided for in subsections 2 through 4.

2001 Acts, ch 24, §11 – 13
Subsection 2, paragraph a amended
Subsections 3 and 5 amended

14B.201 IowAccess advisory council established — duties — membership.

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

This section shall not be construed to impair the right of a person to contract to purchase information or data from the Iowa court information system or any other governmental entity. This section shall not be construed to affect a data purchase agreement or contract in existence on the effective date of this section.

2. *Duties.*

a. The advisory council shall do all of the following:

(1) Recommend to the information technology council rates to be charged for access to and for value-added services performed through IowAccess.

(2) Recommend to the director and the information technology council the priority of projects associated with IowAccess.

(3) Recommend to the director and the information technology council expected outcomes and effects of the use of IowAccess and determine the manner in which such outcomes are to be measured and evaluated.

(4) Review and recommend to the director and the information technology council the IowAccess total budget request and ensure that such request reflects the priorities and goals of IowAccess as established by the advisory council.

(5) Review and recommend to the director and

the information technology council all rules to be adopted by the information technology council that are related to IowAccess.

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

(7) Receive status and operations reports associated with IowAccess.

(8) Other duties as assigned by the information technology council or the director.

b. The advisory council shall also advise the information technology council and the director with respect to the operation of IowAccess and encourage and implement access to government and its public records by the citizens of this state.

c. The advisory council shall serve as a link between the users of public records, the lawful custodians of such public records, and the citizens of this state who are the owners of such public records.

d. The advisory council shall ensure that IowAccess gives priority to serving the needs of the citizens of this state.

3. *Membership.*

a. The advisory council shall be composed of nineteen members including the following:

(1) Five persons appointed by the governor representing the primary customers of IowAccess.

(2) Six persons representing lawful custodians as follows:

(a) One person representing the legislative branch, who shall not be a legislator, to be appointed jointly by the president of the senate, after consultation with the majority and minority leaders of the senate, and by the speaker of the house of representatives, after consultation with the majority and minority leaders of the house of representatives.

(b) One person representing the judicial branch as designated by the chief justice of the supreme court.

(c) One person representing the executive branch as designated by the governor.

(d) One person to be appointed by the governor representing cities who shall be actively engaged in the administration of a city.

(e) One person to be appointed by the governor representing counties who shall be actively engaged in the administration of a county.

(f) One person to be appointed by the governor representing the federal government.

(3) Four members to be appointed by the governor representing a cross section of the citizens of the state.

(4) Four members of the general assembly, two from the senate and two from the house of representatives, with not more than one member from each chamber being from the same political party. The two senators shall be designated by the presi-

dent of the senate after consultation with the majority and minority leaders of the senate. The two representatives shall be designated by the speaker of the house of representatives after consultation with the majority and minority leaders of the house of representatives. Legislative members shall serve in an ex officio, nonvoting capacity. A legislative member is eligible for per diem and expenses as provided in section 2.10.

b. Members appointed by the governor are subject to confirmation by the senate and shall serve four-year staggered terms as designated by the governor. The advisory council shall annually elect its own chairperson from among the voting members of the board. Members appointed by the governor are subject to the requirements of sections 69.16, 69.16A, and 69.19. Members appointed by the governor shall be reimbursed for actual and necessary expenses incurred in performance of their duties. Such members may also be eligible to receive compensation as provided in section 7E.6.

2001 Acts, ch 24, §14
Subsection 2, paragraph b amended

14B.203 Financial transactions.

1. Moneys paid to a participating governmental entity from persons who complete an electronic financial transaction with the governmental entity by accessing IowAccess shall be transferred to the treasurer of state for deposit in the general fund, unless the disposition of the moneys is specifically provided for under other law. The moneys may include all of the following:

- a. Fees required to obtain an electronic public record as provided in section 22.3A.
- b. Fees required to process an application or

file a document, including but not limited to fees required to obtain a license issued by a licensing authority.

c. Moneys owed to a governmental entity by a person accessing IowAccess in order to satisfy a liability arising from the operation of law, including the payment of assessments, taxes, fines, and civil penalties.

2. Moneys transferred using IowAccess may include amounts owed by a governmental entity to a person accessing IowAccess in order to satisfy a liability of the governmental entity. The moneys may include the payment of tax refunds, and the disbursement of support payments as defined in section 252D.16 or 598.1 as required for orders issued pursuant to section 252B.14.

3. In addition to other forms of payment, credit cards shall be accepted in payment for moneys owed to a governmental entity as provided in this section, according to rules which shall be adopted by the treasurer of state. The fees to be charged shall not exceed those permitted by statute. A governmental entity may adjust its fees to reflect the cost of processing as determined by the treasurer of state. The discount charged by the credit card issuer may be included in determining the fees to be paid for completing a financial transaction under this section by using a credit card.

4. Notwithstanding any other provision of this section, the department may establish for the fiscal years beginning July 1, 2001, and ending June 30, 2005, a pilot project for fee collection. Fees shall be collected based on the ability to access court information from remote locations.

2001 Acts, ch 70, §2, 3; 2001 Acts, ch 189, §8
Partial item veto applied
Subsection 1, unnumbered paragraph 1 amended
Subsection 3 stricken and former subsection 4 renumbered as 3
NEW subsection 4

CHAPTER 15

DEPARTMENT OF ECONOMIC DEVELOPMENT

15.104 Duties of the board.

The board shall:

1. Prepare a three-year comprehensive strategic plan of specific goals, objectives, and policies for state economic growth. All other state agencies involved in economic development activities shall annually submit to the board for its review and potential inclusion in the strategic plan their specific strategic plans and programs. The three-year strategic plan for state economic growth shall be updated annually.

2. Develop a method of evaluation of the attainment of goals and objectives from pursuing the policies of the three-year plan.

3. Implement the requirements of chapter 73.

4. Review and approve or disapprove a life science enterprise plan or amendments to that plan

as provided in chapter 10C as that chapter exists on or before June 30, 2004, and according to rules adopted by the board. A life science plan shall make a reasonable effort to provide for participation by persons who are individuals or family farm entities actively engaged in farming as defined in section 10.1. The persons may participate in the life science enterprise by holding an equity position in the life science enterprise or providing goods or service to the enterprise under contract. The plan must be filed with the board not later than June 30, 2004. The life science enterprise may file an amendment to a plan at any time. A life science enterprise is not eligible to file a plan, unless the life science enterprise files a notice with the board. The notice shall be a simple statement indicating that the life science enterprise may file

a plan as provided in this section. The notice must be filed with the board not later than June 30, 2001. The notice, plan, or amendments shall be submitted by a life science enterprise as provided by the board. The board shall consult with the department of agriculture and land stewardship during its review of a life science plan or amendments to that plan. The plan shall include information regarding the life science enterprise as required by rules adopted by the board, including but not limited to all of the following:

a. A description of life science products to be developed by the enterprise.

b. The time frame required by the enterprise to develop the life science products.

c. The amount of capital investment required by the enterprise to develop the life science products.

d. The number of acres of land required to produce the life science products.

e. The type and extent of participation in the life science enterprise by persons who are individuals or family farm entities. If the plan does not provide for participation or minimal participation, the plan shall include a detailed explanation of the reasonable effort made by the life science enterprise to provide for participation.

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

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

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

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

2001 Acts, ch 11, §1

Subsection 1 stricken and former subsections 2 - 9 renumbered as 1 -

8

Subsections 1, 2, and 7 amended

15.106 Duties of the director.

The director shall:

1. Manage the internal operations of the department and establish guidelines and procedures to promote the orderly and efficient administration of the department.

2. Employ personnel as necessary to carry out the duties and responsibilities of the department, consistent with the merit system provisions of chapter 19A for nonprofessional employees. Professional staff of the department are exempt from the merit system provisions of chapter 19A.

3. Prepare a budget for the department, subject to the approval of the board, and prepare reports required by law or by the board.

4. Appoint the administrators of the divisions of the department.

5. Review and submit to the board legislative proposals necessary to maintain current state economic development and tourism laws.

6. Recommend rules to the board for the implementation of this chapter.

7. Report to the board, on at least a quarterly basis, on grants and contracts awarded by the department.

8. Seek to implement the comprehensive strategic plan approved by the board under section 15.104, subsection 1.

9. Implement the requirements of chapter 73.

2001 Acts, ch 11, §2; 2001 Acts, ch 61, §1

Subsection 8 amended

Subsection 9 stricken and former subsection 10 renumbered as 9

15.108 Primary responsibilities.

The department has the following areas of primary responsibility:

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

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

b. Provide staff assistance to the corporation formed under authority of sections 15E.11 to 15E.16 to receive and disburse funds to further the overall development and well-being of the state.

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

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

b. Aid in the marketing and promotion of Iowa products and services. The department may adopt, subject to the approval of the board, a label or trademark identifying Iowa products and services together with any other appropriate design or inscription and this label or trademark shall be registered in the office of the secretary of state. In authorizing the use of a marketing label or trademark to an applicant, the state, and any state agency, official, or employee involved in the authorization, is immune from a civil suit for damages, including but not limited to a suit based on contract, breach of warranty, negligence, strict liability, or tort. Authorization of the use of a marketing label or trademark by the state, or any state agency, official, or employee, is not an express or implied guarantee or warranty concerning the safety, fitness, merchantability, or use of the applicant's product or service. This paragraph does not create a duty of care to the applicant or any other person.

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

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

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

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

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

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

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

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

(1) Provide the mechanisms to promote and facilitate the coordination of management and technical assistance services to Iowa businesses and industries and to communities by the department, by the community colleges, and by the state board of regents institutions, including the small business development centers, the center for industrial research and service, and extension activities. In order to achieve this goal, the department may establish periodic meetings with representatives from the community colleges and the state board of regents institutions to develop this coordination. The community colleges and the state board of regents institutions shall cooperate with the department in seeking to avoid duplication of eco-

nomical development services through greater coordinating efforts in the utilization of space, personnel, and materials and in the development of referral and outreach networks. The department shall annually report on the degree to which economic development activities have been coordinated and the degree to which there are future coordination needs, and the community colleges and the state board of regents institutions shall be given an opportunity to review and comment on this report prior to its printing or release. The department shall also establish a registry of applications for federal funds related to management and technical assistance programs.

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

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

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

(5) Encourage cities, counties, local and regional government organizations, and local and regional economic development organizations to develop and implement comprehensive community and economic development plans. In evaluating financial assistance applications, the department shall award supplementary credit to applications submitted by cities, counties, local and regional government organizations, and local and regional economic development organizations that have developed a comprehensive community and economic development plan.

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

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

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

(3) Provide planning assistance to cities, counties, local and regional government organizations, and local and regional economic development organizations. Subject to the availability of funds for this purpose, the department may provide financial assistance to cities, counties, local and regional government organizations, and local and regional economic development organizations for the purpose of developing community and economic development plans.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

o. Establish a revolving fund to receive contributions to be used for cooperative advertising efforts. Fees and royalties obtained as a result of licensing the use of logos and other creative materials for sale by private vendors on selected products may be deposited in the fund. The department shall adopt by rule a schedule for fees and royalties to be charged.

The department may establish a revolving fund to receive contributions and funds from the product sales center to be used for start-up or expansion of tourism special events, fairs, and festivals as established by department rule.

6. *Employee training and retraining.* To develop employee training and retraining strategies in coordination with the department of education and department of workforce development as tools for business development, business expansion, and enhanced competitiveness of Iowa industry, which will promote economic growth and the creation of new job opportunities and to administer related programs. To carry out this responsibility, the department shall:

a. Coordinate and perform the duties specified under the Iowa industrial new jobs training Act in chapter 260E, the Iowa jobs training Act in chapter 260F, and the workforce development fund in section 15.341.

b. In performing the duties set out in paragraph "a", the department shall:

(1) Work closely with representatives of business and industry, labor organizations, the council on human investment, the department of education, the department of workforce development, and educational institutions to determine the employee training needs of Iowa employers, and where possible, provide for the development of industry-specific training programs.

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

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

(4) Stimulate the creation of innovative employee training and skills development activities, including business consortium and supplier network training programs, and new employee development training models.

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

(6) Review workforce development initiatives as they relate to the state's economic development agenda, recommending action as necessary to

meet the needs of Iowa's communities and businesses.

(7) Incorporate workforce development as a component of community-based economic development activities.

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

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

b. Establish and administer the regulatory information service provided for in section 15E.17.

c. Aid for the development and implementation of the Iowa targeted small business procurement Act established in sections 73.15 through 73.21 and the targeted small business financial assistance program established in section 15.247. The duties of the director under this paragraph include the following:

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

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

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

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

it and loss.

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

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

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

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

(1) Developing a uniform small business vendor application form which can be adopted by all agencies and departments of state government to identify small businesses and targeted small businesses which desire to sell goods and services to the state. This form shall also contain information which can be used to determine certification as a targeted small business pursuant to section 10A.104, subsection 8.

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

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

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

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

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

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

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

h. In addition, the department shall provide assistance to a small business advisory council which shall consist of nine members appointed as follows:

(1) Not more than five of the members shall be from the same political party. The governor shall appoint the members of the advisory council to four-year terms beginning and ending as provided by section 69.19, subject to confirmation by the senate. Two-thirds of the membership of the advisory council shall consist of individuals who own and operate a small business or individuals employed in the management of a small business.

(2) A vacancy on the advisory council shall be filled in the same manner as regular appointments are made for the unexpired portion of the regular term.

(3) The advisory council shall meet in May of each year for the purpose of electing one of its members as chairperson and one of its members as vice chairperson. However, the chairperson and vice chairperson shall not be from the same political party. The advisory council shall meet at least quarterly.

(4) Members of the advisory council shall be allowed their actual and necessary expenses incurred in the performance of their duties. All expenses shall be paid from appropriations to the department for those purposes.

(5) The duties of the advisory council may include but shall not be limited to the following:

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

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

(c) Submit recommendations for legislative or administrative action.

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

(e) Initiate small business studies as deemed necessary.

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

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

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

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

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

pansion of industries now existing within the state, and allied fields to those industries. The information shall also consider the changing composition of the Iowa family and the level of poverty among different age groups and different family structures in Iowa society and their impact on Iowa families.

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

c. Except as otherwise provided in sections 7D.33, 260C.14, and 262.9, provide that an inventor whose research is funded in whole or in part by the state shall assign to the state a proportionate part of the inventor's rights to a letter patent resulting from that research. Royalties or earnings derived from a letter patent shall be paid to the treasurer of state and credited by the treasurer to the general fund of the state. However, the department in conjunction with other state agencies, including the board of regents, shall provide incentives to inventors whose research is funded in whole or in part by the state for having their products produced in the state. These incentives may include taking a smaller portion of the inventor's royalties or earnings than would otherwise occur under this paragraph or other provisions of the law.

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

e. At the director's discretion, accept payment by credit card of any fees, interest, penalties, subscriptions, registrations, purchases, or other payments, or any portion of such payments, which are due or collected by the department. The department may adjust the amount of the payment 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.

f. Provide technical assistance to individuals who are pursuing the purchase and operation of employee-owned businesses.

10. *Economic development planning and research activities.* To provide leadership and support for economic and community development activities statewide. To carry out this responsibility, the department may establish a research center for economic development programs and services whose duties may include but are not limited to the following:

a. Implementation of a comprehensive statewide economic development planning process and provision of leadership, coordination, and support to regional and local economic and community planning efforts.

b. Coordination of the delivery of economic and community development programs with other local, regional, state, federal, and private sector programs and activities.

c. Collection and analysis of data and informa-

tion, development of databases and performing research to keep abreast of Iowa's present economic base, changing market demands, and emerging trends, including identification of targeted markets and development of marketing strategies.

d. Provision of access to databases to facilitate sales and exports by Iowa businesses.

e. Establishment of a database of community and economic information to aid local, regional, and statewide economic development and service delivery efforts.

11. *Housing development.*

a. To provide assistance to local governments, housing organizations, economic development groups, and other local entities to increase the development of housing in the state and to improve the quality of existing housing in order to maximize the effects of other economic development efforts.

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

(1) Provide housing needs assessments.

(2) Provide a one-stop source, in coordination with other agencies of the state, for housing development assistance.

(3) Establish programs which assist communities or local entities in developing housing to meet a range of community needs, including programs to assist homeless shelter operations and programs to assist in the development of housing to enhance economic development opportunities in the community.

2001 Acts, ch 61, §2 - 5

Confirmation, see §2.32

Subsection 1, paragraphs c and d stricken

Subsection 4, paragraph a stricken and paragraphs b - h redesignated as a - g

Subsection 7, paragraph c, subparagraph (5) stricken

Subsection 7, paragraph i stricken and paragraph j redesignated as i

15.111 Rural development coordination. Repealed by 2001 Acts, ch 61, § 19.

15.240 Microenterprise development program — microenterprise development revolving fund. Repealed by 2001 Acts, ch 61, § 19.

15.246 Case management program.

The department shall establish and administer a case management program, contingent upon the availability of funds authorized for the program, and conducted in coordination with the self-employment loan program and other state or federal programs providing financial or technical assistance administered by the department. The case management program shall assist in furnishing information about available assistance to clients seeking to establish or expand small business ventures, furnishing information about available financial or technical assistance, evaluating small business venture proposals, completing viable business start-up or expansion plans, and completing applications for financial or technical as-

sistance under the programs administered by the department. As used in this section, “*client*” means a low-income person eligible for assistance under the self-employment loan program established in section 15.241.

In administering the program, the department may contract with service providers to deliver case management assistance under this section. A service provider may be any entity which the department determines is qualified to deliver case management assistance, including a state agency, a private for-profit or not-for-profit corporation, or other association or organization. The department shall establish rules necessary to carry out this section, including schedules for providing contract payments to service providers, based on the number of hours of case management assistance provided to a client.

2001 Acts, ch 61, §6
Unnumbered paragraph 1 amended

15.251 Industrial new job training program certificates — fee.

The department may charge, within thirty days following the sale of certificates under chapter 260E, the board of directors of the merged area a fee of up to one percent of the gross sale amount of the certificates issued. The amount of this fee shall be deposited and allowed to accumulate in a job training fund created in the department. At the end of each fiscal year, all funds deposited under this subsection into the job training fund during the fiscal year shall be transferred to the workforce development fund account established in section 15.342A.

2001 Acts, ch 61, §7
Appropriation of funds for final phase-out funding for existing labor-management projects; transfer to workforce development fund; 2001 Acts, ch 188, §3
Subsection 1 stricken and subsection 2 redesignated as an unnumbered paragraph

15.261 through 15.268 Repealed by 2001 Acts, ch 61, § 19.

15.281 through 15.288 Repealed by 2001 Acts, ch 61, § 19.

15.331A Sales, services, and use tax refund — contractor or subcontractor.

The eligible 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 economic development area of the eligible 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 eligible business or a supporting business with the department of revenue and finance as follows:

1. 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 economic development area upon which sales or use tax has been paid prior to the project completion, and shall file the forms with the eligible business or supporting business before final settlement is made.

2. The eligible business or a supporting business shall, not more than one year 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 eligible 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 eligible business or a supporting business in accordance with this section shall not be denied by reason of a limitation provision set forth in chapter 421, 422, or 423.

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

2001 Acts, ch 116, §1
Subsection 2 amended

15.333 Investment tax credit.

1. An eligible business may claim a corporate tax credit up to a maximum of ten percent of the new investment which is directly related to new jobs created by the location or expansion of an eligible business under the program. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs earlier. Subject to prior approval by the department of economic development in consultation with the department of revenue and finance, an eligible business whose project primarily involves the production of value-added agricultural products may elect to refund all or a portion of an unused tax credit. For purposes of this section, an eligible business includes a cooperative described in section 521 of the Internal Revenue Code which is not required to file an Iowa corporate income tax return, and whose project primarily involves the production of ethanol. The refund may be used against a tax liability imposed under chapter 422, division II, III, or V. If the business is a partner-

ship, subchapter S corporation, limited liability company, or estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of the partnership, subchapter S corporation, limited liability company, or estate or trust. For purposes of this section, "new investment directly related to new jobs created by the location or expansion of an eligible business under the program" means the cost of machinery and equipment, as defined in section 427A.1, subsection 1, paragraphs "e" and "j", purchased for use in the operation of the eligible business, the purchase price of which has been depreciated in accordance with generally accepted accounting principles, and the cost of improvements made to real property which is used in the operation of the eligible business.

2. An eligible business whose project primarily involves the production of value-added agricultural products, that elects to receive a refund of all or a portion of an unused tax credit, shall apply to the department of economic development for tax credit certificates. An eligible business whose project primarily involves the production of value-added agricultural products shall not claim a tax credit under this section unless a tax credit certificate issued by the department of economic development is attached to the taxpayer's tax return for the tax year during which the tax credit is claimed. For purposes of this section, an eligible business includes a cooperative described in section 521 of the Internal Revenue Code which is not required to file an Iowa corporate income tax return, and whose project primarily involves the production of ethanol. A tax credit certificate shall not be valid until the tax year following the date of the project completion. A tax credit certificate shall contain the taxpayer's name, address, tax identification number, the date of project completion, the amount of the tax credit, other information required by the department of revenue and finance. The department of economic development shall not issue tax credit certificates which total more than four million dollars during a fiscal year. If the department receives applications for tax credit certificates in excess of four million dollars, the applicants shall receive certificates for a prorated amount. The tax credit certificates shall not be transferred. For a cooperative described in section 521 of the Internal Revenue Code that is not required to file an Iowa corporate income tax return, the department of economic development shall require that the cooperative submit a list of its members and the share of each member's interest in the cooperative. The department shall issue a tax credit certificate to each member contained on the submitted list.

3. For purposes of this section, the purchase price of real property and any buildings and structures located on the real property will be consid-

ered a new investment in the location or expansion of an eligible business. However, if within five years of purchase, the eligible business sells, disposes of, razes, or otherwise renders unusable all or a part of the land, buildings, or other existing structures for which tax credit was claimed under this section, the income tax liability of the eligible business for the year in which all or part of the property is sold, disposed of, razed, or otherwise rendered unusable shall be increased by one of the following amounts:

a. One hundred percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within one full year after being placed in service.

b. Eighty percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within two full years after being placed in service.

c. Sixty percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within three full years after being placed in service.

d. Forty percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within four full years after being placed in service.

e. Twenty percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within five full years after being placed in service.

2000 Acts, ch 1213, §1, 10; 2001 Acts, ch 123, §1; 2001 Acts, ch 141, §1, 8

2000 amendments to subsection 1 and new subsection 2 and relating to businesses involved in production of value-added agricultural products take effect July 1, 2001, and apply to tax years beginning on or after that date; 2000 Acts, ch 1213, §10

2001 amendment to subsection 1 affecting the definition of "new investment directly related to new jobs created by the location or expansion of an eligible business under the program" is retroactively applicable on and after January 1, 2001; 2001 Acts, ch 141, §8

See Code editor's note to §12.65

Section amended

15.335 Research activities credit.

1. An eligible business may claim a corporate tax credit for increasing research activities in this state during the period the eligible business is participating in the program.

a. The credit equals the sum of the following:

(1) Six and one-half percent of the excess of qualified research expenses during the tax year over the base amount for the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities.

(2) Six and one-half percent of the basic research payments determined under section 41(e)(1)(A) of the Internal Revenue Code during the tax year based upon 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 re-

search expenditures.

b. In lieu of the credit amount computed in paragraph “a”, subparagraph (1), an eligible business may elect to compute the credit amount for qualified research expenses incurred in this state in a manner consistent with the alternative incremental credit described in section 41(c)(4) of the Internal Revenue Code. The taxpayer may make this election regardless of the method used for the taxpayer’s federal income tax. The election made under this paragraph is for the tax year and the taxpayer may use another or the same method for any subsequent year.

c. For purposes of the alternate credit computation method in paragraph “b”, the credit percentages applicable to qualified research expenses described in clauses (i), (ii), and (iii) of section 41(c)(4)(A) of the Internal Revenue Code are one and sixty-five hundredths percent, two and twenty hundredths percent, and two and seventy-five hundredths percent, respectively.

2. The credit allowed in this section is in addition to the credit authorized in section 422.10 and section 422.33, subsection 5. However, if the alternative credit computation method is used in section 422.10 or section 422.33, subsection 5, the credit allowed in this section shall also be computed using that method.

3. If the eligible business is a partnership, S corporation, limited liability company, or estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. The amount claimed by the individual shall be based upon the pro rata share of the individual’s earnings of the partnership, S corporation, limited liability company, or estate or trust.

4. For purposes of this section, “base amount”, “basic research payment”, and “qualified research expense” mean the same as defined for the federal credit for increasing research activities under section 41 of the Internal Revenue Code, except that for the alternative incremental credit such amounts are for research conducted within this state. For purposes of this section, “Internal Revenue Code” means the Internal Revenue Code in effect on January 1, 2001.

5. 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 year.

2001 Acts, ch 127, §1, 9, 10
2001 amendment to subsection 4 is effective May 16, 2001, and applies retroactively to tax years beginning on or after January 1, 2000; 2001 Acts, ch 127, §9, 10

Subsection 4 amended

15.342A Workforce development fund account.

A workforce development fund account is estab-

lished in the office of the treasurer of state under the control of the department. The account shall receive funds pursuant to section 422.16A up to a maximum of four million dollars per year. The account shall also receive funds pursuant to section 15.251 with no dollar limitation.

2001 Acts, ch 188, §21
Section amended

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 84A.7 and the job training fund established in section 260F.6.

b. Moneys appropriated to the fund from the workforce development fund account established in section 15.342A.

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. Training and retraining programs for targeted industries.

b. Projects under chapter 260F. The department shall require a match from all businesses participating in a training project under chapter 260F.

c. Apprenticeship programs under section 260C.44, including new or statewide building trades apprenticeship programs.

d. Innovative skill development activities.

e. To cover the costs of the administration of workforce development programs and services available through the department. A portion of these funds may be used to support efforts by the community colleges to provide workforce services to Iowa employers.

3. a. The director shall submit not later than January 1 of each year at a regular or special meeting, for approval by the economic development board, the proposed allocation of funds from the workforce development fund to be made for the next 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. Notwithstanding section 8.39, 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.

b. Moneys in the workforce development fund shall be allocated as follows:

(1) Three million dollars shall be used for purposes provided in section 260F.6.

(2) One million dollars shall be used for purposes provided in section 260F.6B.

2001 Acts, ch 188, §22

Subsection 3, paragraph b stricken and rewritten

15.362 Definitions.

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

1. "*Certified school-to-career program*" or "*certified program*" means a sequenced and articulated secondary and postsecondary program registered as an apprenticeship program under 29 C.F.R. subtit. A, pt. 29, which is conducted pursuant to an agreement as provided in section 15.364 or an individual program of study developed jointly by a secondary school, postsecondary institution, and an employer that meets the standards enumerated in section 15.363, that integrates a secondary school curriculum with private sector job training which places students in job internships, and which is designed to continue into postsecondary education and that will result in teaching new skills and adding value to the wage-earning potential of participants and increase their long-term employability in the state, and which is conducted pursuant to an agreement as provided in section 15.364.

2. "*Employer*" means an employer or a consortium of two or more employers.

3. "*Participant*" means an individual between the ages of sixteen and twenty-four who is enrolled in a public or private secondary or postsecondary school and who initiated participation in a certified school-to-career program no later than the start of the student's senior year of high school.

4. "*Payroll expenditures*" means the base wages actually paid by an employer to a participant plus the amount held in trust to be applied toward the participant's postsecondary education.

5. "*Sponsor*" means any person, association,

committee, or organization operating a school-to-career program and in whose name the program is or will be registered or approved.

2001 Acts, ch 167, §1

NEW subsection 2 and former subsections 2 - 4 renumbered as 3 - 5

15.364 Certified program agreement.

The certified program shall be conducted pursuant to a signed written agreement between each participant and the employer which contains at least the following provisions:

1. The names and signatures of the participant and the sponsor or employer and the signature of a parent or guardian if the participant is a minor.

2. A description of the career field in which the participant is to be trained, and the beginning date and duration of the training and employment.

3. The employer's agreement to provide paid employment, at a base wage, for the participant beginning no earlier than the participant's junior year in high school and ending no later than the fall after the participant's second year of postsecondary education.

4. The participant and employer shall agree upon set minimum academic standards which must be maintained through the participant's secondary and postsecondary education.

5. This base wage paid to the participant shall not be less than the minimum wage prescribed by Iowa law or the federal Fair Labor Standards Act, whichever is applicable.

6. That in addition to the base wage paid to the participant, the employer shall pay an additional sum to be held in trust to be applied toward the participant's postsecondary education required for completion of the certified program. The additional amount must be not less than an amount determined by the department of economic development to be sufficient to provide payment of tuition expenses toward completion of not more than two academic years of the required postsecondary education component of the certified program at an Iowa community college or an Iowa public or private college or university. This amount shall be held in trust for the benefit of the participant pursuant to rules adopted by the department of economic development. Payment into an ERISA-approved fund for the benefit of the participant shall satisfy this requirement. The specific fund shall be specified in the agreement. An employer that is a consortium of two or more employers shall not be subject to the requirements of this subsection if tuition is included as part of a stipend paid by the employer to a participant and can be identified as such.

7. a. That if a participant does not complete the certified program contemplated by the agreement after entering a postsecondary education program, any unexpended funds being held in trust for the participant's postsecondary educa-

tion shall be paid back to the employer. In addition the participant must repay to the employer amounts paid from the trust which were expended on the participant's behalf for postsecondary education.

b. That if a participant does not complete the certified program contemplated by the agreement prior to entering a postsecondary education program, one-half of the moneys being held in trust for the participant's postsecondary education shall be paid either to a postsecondary education institution as defined in section 261C.3 of the participant's choice or, notwithstanding any provision of this part to the contrary, to an apprenticeship program of the participant's choice which has been approved under 29 C.F.R., subtit. A, pt. 29, to pay tuition or expenses of the participant. The other one-half of the trust moneys shall be paid back to the employer. Any moneys to be transferred for the benefit of the participant which are not transferred within five years for purposes of education at the designated postsecondary institution, shall be paid back to the employer.

2001 Acts, ch 167, §2, 3
Subsection 6 amended
Subsections 7 and 8 stricken and former subsection 9 renumbered as 7

15.365 Payroll expenditure refund.

1. An employer who employs a participant in a certified school-to-career program may claim a refund of twenty percent of the employer's payroll expenditures for each participant in the certified program or twenty percent of the employer's expenditures for participant experience expenses provided for in the certified program agreement which may include instructor expenses, instructional materials, up to one hundred fifty thousand dollars of training facility costs per program, and project coordination. The refund is limited to the

first four hundred hours of payroll or participant experience expenditures per participant for each calendar year the participant is in the certified program, not to exceed three years per participant.

2. To receive a refund under subsection 1 for a calendar year, the employer shall file the claim by July 1 of the following calendar year. The claim shall be filed on forms provided by the department of economic development and the employer shall provide such information regarding the employer's participation in a certified school-to-career program as the department may require. Forms should be designed such that claims for refunds for more than one participant may be made on a single form.

3. For each fiscal year of the fiscal period beginning July 1, 1999, and ending June 30, 2004, there is appropriated up to five hundred thousand dollars annually from the general fund of the state to the department of economic development to pay refunds under this section. If the amount appropriated in a fiscal year is insufficient to pay all refund claims for the calendar year in full, each claimant shall receive a proportion of the claimant's refund claim equal to the ratio of the amount appropriated to the total amount of refund claims. Any unpaid portion of a claim shall not be paid from a subsequent fiscal year appropriation.

4. The department of economic development shall consult with the department of revenue and finance for purposes of this section. The department of economic development shall adopt rules as deemed necessary to carry out the purposes of the certified school-to-career program.

2001 Acts, ch 167, §4
Reduced appropriation for fiscal years beginning July 1, 1999, July 1, 2000, and July 1, 2001, for paying refunds under this section; 99 Acts, ch 197, §18; 2000 Acts, ch 1214, §11, 58; 2000 Acts, ch 1230, §34; 2001 Acts, ch 172, §13, 20; 2001 Acts, ch 188, §32
Subsection 1 amended

CHAPTER 15A

USE OF PUBLIC FUNDS TO AID ECONOMIC DEVELOPMENT

15A.1 Economic development — public purpose — environmental protection and waste disposal requirements.

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

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

2. Before public funds are used for grants,

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

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

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

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

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

3. In addition to the requirements of subsection 2, a state agency shall not provide a grant, loan, or other financial assistance to a private person or on behalf of a private person unless the business for whose benefit the financial assistance is to be provided meets, to the satisfaction of the state agency, all of the following:

a. The business makes a report detailing the circumstances of its violations, if any, of a federal or state environmental protection statute, regulation, or rule within the previous five years. The state agency shall take into consideration before allowing financial assistance this report of the business.

b. If the business generates solid or hazardous waste, that the business conducts in-house audits and management plans to reduce the amount of the waste and to safely dispose of the waste. For purposes of this paragraph, a business may, in lieu of conducting in-house audits, authorize the land quality and waste management assistance division of the department of natural resources or the Iowa waste reduction center established under section 268.4 to provide the audits.

4. A state agency shall disburse public moneys used for grants, loans, tax incentives, or other financial assistance for economic development without discrimination or without the use of terms or conditions which are more onerous than those regularly extended to persons of similar economic backgrounds and based on an applicant's age, color, creed, national origin, race, religion, marital status, sex, physical disability, or familial status.

5. In addition to the other requirements of this section, a state agency may give additional consideration or additional points in the application of rating or evaluation criteria in providing a grant, loan, or other financial assistance for economic development-related purposes to a person or business for whose benefit the financial assistance is to be provided if the person or business is located

in an area that meets one of the following criteria:

a. The area is a brownfield site as defined in section 15.291.

b. The area is a blighted area as defined in section 403.17.

c. The area is located in a city or county that meets the distress criteria provided under the enterprise zone program in section 15E.194, subsection 1 or 2.

2001 Acts, ch 7, §1; 2001 Acts, ch 156, §1
Subsection 3, paragraph b amended
NEW subsection 5

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's 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 comple-

tion, 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 al-

lowed 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 property 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.

a. The credit equals the sum of the following:

(1) Thirteen percent of the excess of qualified research expenses during the tax year over the base amount for the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities.

(2) Thirteen percent of the basic research payments determined under section 41(e)(1)(A) of the Internal Revenue Code during the tax year based upon 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.

b. In lieu of the credit amount computed in paragraph "a", subparagraph (1), a business may elect to compute the credit amount for qualified research expenses incurred in this state within the zone in a manner consistent with the alternative incremental credit described in section 41(c)(4) of the Internal Revenue Code. The taxpayer may make this election regardless of the method used for the taxpayer's federal income tax. The election made under this paragraph is for the tax year and the taxpayer may use another or the same method for any subsequent year.

c. For purposes of the alternate credit computation method in paragraph "b", the credit percentages applicable to qualified research expenses described in clauses (i), (ii), and (iii) of section 41(c)(4)(A) of the Internal Revenue Code are three and thirty hundredths percent, four and forty hundredths percent, and five and fifty hundredths percent, respectively.

d. 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.

e. For the purposes of this subsection, "base amount", "basic research payment", and "qualified research expense" mean the same as defined for the federal credit for increasing research activities under section 41 of the Internal Revenue Code, except that for the alternative incremental credit such amounts are for research conducted within this state within the zone. For purposes of this subsection, "Internal Revenue Code" means the Internal Revenue Code in effect on January 1, 2001.

f. The credit authorized in this subsection is in lieu of the credit authorized in section 422.10 and 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 remaining 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.

2001 Acts, ch 127, §2, 9, 10
2001 amendment to subsection 8, paragraph e, is effective May 16, 2001, and applies retroactively to tax years beginning on or after January 1, 2000;
2001 Acts, ch 127, §9, 10
Subsection 8, paragraph e amended

CHAPTER 15E

DEVELOPMENT ACTIVITIES

DIVISION IV

LOCAL DEVELOPMENT CORPORATIONS

15E.25 through 15E.29 Repealed by 2001 Acts, ch 61, § 19.

DIVISION VIII

IOWA SEED CAPITAL CORPORATION

Dissolution of Iowa seed capital corporation;
97 Acts, ch 143, §5, 6; liquidation and sale of corporation and transfer of remaining funds;
98 Acts, ch 1225, §27, 32; annual report;
99 Acts, ch 197, §15; 2000 Acts, ch 1230, §31;
completion of liquidation, dissolution,
or sale of corporation by December 31, 2001,
and transfer of remaining funds; annual report;
2001 Acts, ch 188, §16, 29

15E.81 through 15E.85 Repealed by 2001 Acts, ch 61, § 19.

15E.87 through 15E.94 Repealed by 2001 Acts, ch 61, § 19.

With respect to proposed amendment to former §15E.91 by 2000 Acts, ch 1149, §160, 187, see Code editor's note to §12.65

DIVISION IX

IOWA EXPORT TRADING COMPANY

15E.106 through 15E.108 Repealed by 2001 Acts, ch 61, § 19.

DIVISION XII

LOAN REPAYMENTS

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 economic 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.

2001 Acts, ch 61, §8
Subsection 7 stricken

DIVISION XIII

BUSINESS DEVELOPMENT FINANCE

15E.143 Board of directors.

1. The board shall consist of twelve directors, seven of which represent the public and five of which represent the shareholders. The seven public directors consist of:

- a. The director of the department.
- b. The director of the Iowa finance authority.
- c. The superintendent of banking.
- d. The superintendent of credit unions.
- e. The commissioner of insurance.

f. The treasurer of state.
g. Or the designees of the officials named in paragraphs "a" through "f".

2. The director of the department, or the director's designee, shall serve as chairperson of the board.

3. Within sixty days of July 1, 1988, the chairperson shall convene the public directors for the purpose of organizing the corporation under chapter 490.

4. Within sixty days of the completion of the initial stock offering, the chairperson shall convene a meeting of the shareholders for the purpose of the initial election of the private directors. The private directors hold office until the next annual meeting of the corporation or special meeting held in lieu of the annual meeting after their election, and until their successors are elected and qualify unless sooner removed in accordance with the by-laws. A vacancy in the office of a director elected by the shareholders shall be filled by the other directors elected by the shareholders.

5. If stock is not issued and private directors are not elected, all powers of the board shall be exercised by the public directors.

Notwithstanding any provisions of law to the contrary, officers and directors of insurance companies and other financial institutions may be members of the board of the corporation organized for the purposes of this division to which the insurance company or other financial institution may make a loan or may make an investment.

2001 Acts, ch 61, §9, 10
Subsection 1, paragraph c stricken and former paragraphs d - h redesignated as c - g
Subsection 2 amended

DIVISION XV

IOWA BUSINESS INVESTMENT CORPORATION

15E.169 through 15E.171 Repealed by 2001 Acts, ch 61, § 19.

DIVISION XVII

IOWA CAPITAL INVESTMENT BOARD

15E.181 through 15E.184 Repealed by 2001 Acts, ch 61, § 19.

DIVISION XVIII

ENTERPRISE ZONES

15E.193B Eligible housing business.

1. A housing business qualifying under this section is eligible to receive incentives and assistance only as provided in this section. Sections 15E.193 and 15E.196 do not apply to an eligible housing business qualifying under this section.

2. An eligible housing business under this section includes a housing developer, housing contractor, or nonprofit organization that builds or rehabilitates a minimum of four single-family homes located in that part of a city or county in which there is a designated enterprise zone or one multiple dwelling unit building containing three or more individual dwelling units located in that part of a city or county in which there is a designated enterprise zone.

3. The single-family homes and dwelling units which are rehabilitated or constructed by the eligible housing business shall be modest homes or units but shall include the necessary amenities. When completed and made available for occupancy, the single-family homes and dwelling units shall meet the United States department of housing and urban development's housing quality standards and local safety standards.

4. The eligible housing business shall complete its building or rehabilitation within two years from the time the business begins construction on the single-family homes and dwelling units. The failure to complete construction or rehabilitation within two years shall result in the eligible housing business becoming ineligible and subject to the repayment requirements and penalties enumerated in subsection 7.

5. An eligible housing business shall provide the enterprise zone commission with all of the following information:

a. The long-term strategic plan for the housing business which shall include labor and infrastructure needs.

b. Information dealing with the benefits the housing business will bring to the area.

c. Examples of why the housing business should be considered or would be considered a good business enterprise.

d. An affidavit that it has not, within the last five years, violated state or federal environmental and worker safety statutes, rules, and regulations or if such violation has occurred that there were mitigating circumstances or such violations did not seriously affect public health or safety or the environment.

e. Information showing the total costs and sources of project financing that will be utilized for the new investment directly related to housing for which the business is seeking approval for a tax credit provided in subsection 6, paragraph "a".

6. An eligible housing business which has been approved to receive incentives and assistance by the department of economic development pursuant to application as provided in section 15E.195 shall receive all of the following incentives and assistance for a period not to exceed ten years:

a. An eligible housing business may claim a tax credit up to a maximum of ten percent of the new investment which is directly related to the building or rehabilitating of a minimum of four

single-family homes located in that part of a city or county in which there is a designated enterprise zone or one multiple dwelling unit building containing three or more individual dwelling units located in that part of a city or county in which there is a designated enterprise zone. The new investment that may be used to compute the tax credit shall not exceed the new investment used for the first one hundred forty thousand dollars of value for each single-family home or for each unit of a multiple dwelling unit building containing three or more units. The tax credit may be used to reduce the tax liability imposed under chapter 422, division II, III, or V. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs earlier. If the business is a partnership, S corporation, limited liability company, or estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

b. Sales, services, and use tax refund for taxes paid by an eligible business including an eligible business acting as a contractor or subcontractor, as provided in section 15.331A.

7. If a business has received incentives or assistance under this section and fails to maintain the requirements of this section to be an eligible housing business, the business is subject to repayment of all or a portion of the incentives and assistance that it has received. The department of revenue and finance shall have the authority to recover the value of state taxes or incentives provided under this section. The value of state incentives provided under this section includes applicable interest and penalties. The department of economic development and the city and county, as applicable, shall enter into agreement with the business specifying the method for determining the amount of incentives or assistance paid which will be repaid in the event of failure to maintain the requirements of this section. In addition, a business that fails to maintain the requirements of this section shall not receive incentives or assistance for each year during which the business is not in compliance.

8. The amount of the tax credits determined pursuant to subsection 6, paragraph "a", for each project shall be approved by the department of economic development. The department shall utilize the financial information required to be provided under subsection 5, paragraph "e", to determine the tax credits allowed for each project. In determining the amount of tax credits to be allowed for a project, the department shall not include the portion of the project cost financed through federal, state, and local government tax credits, grants, and forgivable loans.

9. The department of economic development and the department of revenue and finance shall each adopt rules to jointly administer this section.

2001 Acts, ch 141, §2 - 4, 8
 2001 amendments to subsection 2 and subsection 6, paragraph a, apply retroactively on and after January 1, 2001; 2001 Acts, ch 141, §§
 2001 amendment to subsection 6, paragraph b, is effective May 16, 2001, and applies retroactively to July 1, 1998; 2001 Acts, ch 141, §§
 Subsection 2 amended
 Subsection 6, paragraphs a and b amended

15E.193C Eligible development business.

1. A development business qualifying under this section is eligible to receive incentives and assistance only as provided in this section. Sections 15E.193, 15E.193B, and 15E.196 do not apply to an eligible development business qualifying under this section.

2. An eligible development business includes a developer or development contractor that constructs, expands, or rehabilitates a building space with a minimum capital investment of at least five hundred thousand dollars in that part of a city or county in which there is a designated enterprise zone. An eligible development business is eligible for one, but not both, of the following exemptions to the capital investment requirements:

a. For an eligible development business purchasing a vacant building suitable for industrial use, the fair market value of the building and land, not to exceed two hundred fifty thousand dollars, as determined by the local enterprise zone commission, shall be deducted from the capital investment requirement.

b. For an eligible development business that rehabilitates a building space that has been in an enterprise zone for at least five years, the fair market value as established by an appraisal of the building, not to exceed two hundred fifty thousand dollars, shall be deducted from the capital investment requirement.

3. Upon completion of the construction, expansion, or rehabilitation project by the eligible development business, the building space shall not be occupied by a retail business.

4. An eligible development business shall complete its construction, expansion, or rehabilitation within three years from the time the eligible development business receives approval from the department. The failure to complete construction, expansion, or rehabilitation within three years shall result in the eligible development business becoming ineligible and subject to the repayment requirements and penalties provided in subsection 8.

5. Prior to applying for assistance under this section, an eligible development business shall enter into an agreement with at least one business for purposes of locating the business in all or a portion of the building space for a period of at least five years.

6. An eligible development business shall provide the enterprise zone commission with all of the

following information:

a. The long-term strategic plan for the development business which shall include infrastructure needs and a copy of any agreement entered into by the eligible development business as required under subsection 5.

b. Information relating to the benefits the development business will bring to the area.

c. Examples of why the development business should be considered or would be considered a good business enterprise.

d. An affidavit that the development business has not, within the last five years, violated state or federal environmental and worker safety statutes, rules, and regulations or if such violation has occurred that there were mitigating circumstances or the violations did not seriously affect public health or safety or the environment.

7. An eligible development business, which has been approved to receive incentives and assistance by the department of economic development pursuant to section 15E.195, shall be eligible to receive all of the following incentives and assistance for a period not to exceed ten years:

a. An eligible development business may claim a tax credit up to a maximum of ten percent of the new investment that is directly related to the construction, expansion, or rehabilitation of building space to be used for manufacturing, processing, cold storage, distribution, or office facilities. For purposes of this section, "new investment" includes the purchase price of land and the cost of improvements made to real property. The tax credit may be claimed by an eligible development business for the tax year in which the construction, expansion, or rehabilitation is completed. The tax credit may be used to reduce the tax liability imposed under chapter 422, division II, III, or V, or chapter 432. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs earlier. If the business is a partnership, S corporation, limited liability company, or estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

b. Sales, services, and use tax refund, as provided in section 15.331A.

c. The county or city for which an eligible enterprise zone is certified may exempt from all property taxation all or a portion of the value added to the property upon which an eligible development business constructs, expands, or rehabilitates property in an enterprise zone. The amount of value added for purposes of this* shall be the amount of the increase in assessed valuation of the property following the construction, expansion, or

rehabilitation by the development business in the enterprise zone. If an exemption provided pursuant to this* is made applicable to only a portion of the property within an enterprise zone, the definition of that subset of eligible property must be by uniform criteria that further some planning objective established by the city or county enterprise zone commission and approved by the city or county. The exemption may be allowed for a period not to exceed ten years beginning the year the eligible development business enters into an agreement with the county or city to construct, expand, or rehabilitate property in an enterprise zone.

8. If a development business has received incentives or assistance under this section and fails to maintain the requirements of this section to be an eligible development business, the business is subject to repayment of all or a portion of the incentives and assistance that it has received. The department of revenue and finance shall have the authority to recover the value of state taxes or incentives provided under this section. The value of state incentives provided under this section includes applicable interest and penalties. The department of economic development and the city and county, as applicable, shall enter into an agreement with the business specifying the method for determining the amount of incentives or assistance paid which will be repaid in the event of failure to maintain the requirements of this section. In addition, a business that fails to maintain the requirements of this section shall not receive incentives or assistance for each year during which the business is not in compliance.

9. The department of economic development and the department of revenue and finance shall each adopt rules pursuant to chapter 17A to jointly administer this section.

10. An eligible business under section 15E.193 is not eligible for incentives and assistance listed in section 15E.196 if the property is owned, or was previously owned, by an approved development business that has received incentives and assistance under this section.

11. If, within five years of the completion of a construction, expansion, or rehabilitation project, the development business or its successor sells or leases any space to any retail business, the development business shall proportionally refund any tax credits, refunds, or exemptions which were claimed under this section.

2001 Acts, ch 141, §5, 8

*The word "paragraph" probably intended; corrective legislation is pending

Section applies retroactively on and after January 1, 2001; 2001 Acts, ch 141, §8

NEW section

15E.195 Enterprise zone commission.

1. A county which designates an enterprise zone pursuant to section 15E.194, subsection 1, and in which an eligible enterprise zone is certified shall establish an enterprise zone commission to

review applications from qualified businesses located within or requesting to locate within an enterprise zone designated pursuant to section 15E.194, subsection 1, to receive incentives or assistance as provided in section 15E.196. The enterprise zone commission shall also review applications from qualified housing businesses requesting to receive incentives or assistance as provided in section 15E.193B. The enterprise zone commission shall also review applications from qualified development businesses requesting to receive incentives or assistance as provided in section 15E.193C. The commission shall consist of nine members. Five of these members shall consist of one representative of the board of supervisors, one member with economic development expertise chosen by the department of economic development, one representative of the county zoning board, one member of the local community college board of directors, and one representative of the local workforce development center. These five members shall select the remaining four members. If the enterprise zone consists of an area meeting the requirements for eligibility for an urban or rural enterprise community under Title XIII of the federal Omnibus Budget Reconciliation Act of 1993, one of the remaining four members shall be a representative of that community. A county shall have only one enterprise zone commission to review applications for incentives and assistance for businesses located within or requesting to locate within a certified enterprise zone designated pursuant to section 15E.194, subsection 1.

2. A city with a population of twenty-four thousand or more which designates an enterprise zone pursuant to section 15E.194, subsection 2, and in which an eligible enterprise zone is certified shall establish an enterprise zone commission to review applications from qualified businesses located within or requesting to locate within an enterprise zone to receive incentives or assistance as provided in section 15E.196. The enterprise zone commission shall review applications from qualified housing businesses requesting to receive incentives or assistance as provided in section 15E.193B. The enterprise zone commission shall also review applications from qualified development businesses requesting to receive incentives or assistance as provided in section 15E.193C. The commission shall consist of nine members. Six of these members shall consist of one representative of an international labor organization, one member with economic development expertise chosen by the department of economic development, one representative of the city council, one member of the local community college board of directors, one member of the city planning and zoning commission, and one representative of the local workforce development center. These six members shall select the remaining three members. If

the enterprise zone consists of an area meeting the requirements for eligibility for an urban enterprise community under Title XIII of the federal Omnibus Budget Reconciliation Act of 1993, one of the remaining three members shall be a representative of that community. If a city contiguous to the city designating the enterprise zone is included in an enterprise zone, a representative of the contiguous city, chosen by the city council, shall be a member of the commission. A city in which an eligible enterprise zone is certified shall have only one enterprise zone commission. If a city has established an enterprise zone commission prior to the effective date of this Act, the city may petition to the department of economic development to change the structure of the existing commission.

3. The commission may adopt more stringent requirements, including requirements related to compensation and benefits, for a business to be eligible for incentives or assistance than provided in sections 15E.193, 15E.193B, and 15E.193C. The commission may develop as an additional requirement that preference in hiring be given to individuals who live within the enterprise zone. The commission shall work with the local workforce development center to determine the labor availability in the area. The commission shall examine and evaluate building codes and zoning in the enterprise zone and make recommendations to the appropriate governing body in an effort to promote more affordable housing development.

4. If the enterprise zone commission determines that a business qualifies and is eligible to receive incentives or assistance as provided in section 15E.193B, 15E.193C, or 15E.196, the commission shall submit an application for incentives or assistance to the department of economic development. The department may approve, defer, or deny the application.

5. In making its decision, the commission or department shall consider the impact of the eligible business on other businesses in competition with it and compare the compensation package of businesses in competition with the business being considered for incentives or assistance. The commission or department shall make a good faith effort to identify existing Iowa businesses within an industry in competition with the business being considered for incentives or assistance. The commission or department shall also make a good faith effort to determine the probability that the proposed incentives or assistance will displace employees of existing businesses. In determining the impact on businesses in competition with the business seeking incentives or assistance, jobs created as a result of other jobs being displaced elsewhere in the state shall not be considered direct jobs created.

However, if the commission or department finds that an eligible 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 eligible business shall not qualify for incentives or assistance under section 15E.193B, 15E.193C, or 15E.196, unless the commission or 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 an eligible business is eligible for incentives or assistance under section 15E.193B, 15E.193C, or 15E.196, the commission or department shall be exempt from chapter 17A. If requested by the commission or department, the business shall provide copies of materials documenting the type of violation, any fees or penalties assessed, court filings, final disposition of any findings, and any other information which would assist the commission or department in assessing the nature of any violation.

6. A business that is approved to receive incentives or assistance shall, for the length of its designation as an enterprise zone business, certify annually to the county or city, as applicable, and the department of economic development its compliance with the requirements of section 15E.193, 15E.193B, or 15E.193C.

2001 Acts, ch 141, §6, 8
2001 amendments apply retroactively on and after January 1, 2001;
2001 Acts, ch 141, §8
Section amended

15E.196 Incentives — assistance.

For purposes of determining the incentives or assistance provided in this section, “eligible business” means a business which has been approved to receive incentives and assistance by the department of economic development pursuant to application as provided in section 15E.195. The incentives and assistance provided under this division for businesses located in enterprise zones shall be for a period not to exceed ten years and shall include all of the following:

1. *a.* New jobs credit from withholding, as provided in section 15.331.

b. (1) As an alternative to paragraph “a”, a business may provide a housing assistance program in the form of down payment assistance or rental assistance for employees in new jobs, as defined in section 260E.2, who buy or rent housing located within any certified enterprise zone. A business establishing a housing assistance program shall fund this program through a credit from withholding based on the wages paid to the employees participating in the housing assistance program. An amount equal to one and one-half percent of the gross wages paid by the employer to each employee participating in the housing assistance program shall be credited from the payment made by an employer pursuant to section 422.16.

If the amount of the withholding by the employer is less than one and one-half percent of the gross wages paid to the employees, then the employer shall receive a credit against other withholding taxes due by the employer. The employer shall deposit the amount of the credit quarterly into a housing assistance fund created by the business out of which the business shall provide employees enrolled in the housing assistance program with down payment assistance or rental assistance.

(2) A business may enter into an agreement with the county or city designating the enterprise zone pursuant to section 15E.194 to borrow initial moneys to fund a housing assistance program. The county or city may appropriate from the general fund of the county or city for the assistance program an amount not to exceed an amount estimated by the department of revenue and finance to be equal to the total amount of credit from withholding for employees determined by the business to be enrolled in the program during the first two years. The business shall pay the principal and interest on the loan out of moneys received from the credit from withholding provided for in subparagraph (1). The terms of the loan agreement shall include the principal amount, the interest rate, the terms of repayment, and the term of the loan. The terms of the loan agreement shall not extend beyond the period during which the enterprise zone is certified.

(3) The employer shall certify to the department of revenue and finance that the credit from withholding is in accordance with an agreement and shall provide other information the department may require.

(4) An employee participating in the housing assistance program will receive full credit for the amount withheld as provided in section 422.16.

2. Sales, services, and use tax refund, as provided in section 15.331A.

3. Investment tax credit, as provided in section 15.333.

4. Research activities credit, as provided in section 15.335.

5. The county or city for which an eligible enterprise zone is certified may exempt from all property taxation all or a portion of the value added to the property upon which an eligible business locates or expands in an enterprise zone and which is used in the operation of the eligible business. The amount of value added for purposes of this subsection shall be the amount of the increase in assessed valuation of the property following the location or expansion of the business in the enterprise zone. If an exemption provided pursuant to this subsection is made applicable to only a portion of the property within an enterprise zone, the definition of that subset of eligible property must be by uniform criteria which further some planning objective established by the city or county enterprise zone commission and approved by the eligible city

or county. The exemption may be allowed for a period not to exceed ten years beginning the year the eligible business enters into an agreement with the county or city to locate or expand operations in an enterprise zone.

6. Insurance premium tax credit, as provided in section 15.333A.

7. A business eligible to receive incentives and assistance described in this section and located in a building for which incentives and assistance are or have been claimed by an approved development business under section 15E.193C is not eligible to receive the following incentives and assistance:

a. An investment tax credit under subsection 3 for the portion of the investment tax credit that is claimed on the purchase price of land or improvements to real property by an approved development business pursuant to section 15E.193C, subsection 7, paragraph "a".

b. Sales, services, and use tax refund under subsection 2 that is made pursuant to section 15E.193C, subsection 7, paragraph "b".

c. A property tax exemption under subsection 5 for improvements to real property that are exempted from property taxation pursuant to section 15E.193C, subsection 7, paragraph "c".

2001 Acts, ch 141, §7, 8
 Subsection 7 applies retroactively on and after January 1, 2001; 2001 Acts, ch 141, §8
 NEW subsection 7

DIVISION XIX

IOWA AGRICULTURAL INDUSTRY FINANCE ACT

15E.208 Qualified corporations — Iowa agricultural industry finance loans.

1. The department may award an Iowa agricultural industry finance loan to an Iowa agricultural industry finance corporation if the department in its discretion determines that the corporation is qualified under this section.

2. The corporation must apply for an Iowa agricultural industry finance loan on forms and according to procedures required by the department.

3. The department shall loan all of the amounts available to the department pursuant to this division to a qualified corporation with provisions and restrictions as determined by the department and contained in a loan agreement executed between the department and the qualified corporation.

a. The department may attach conditions to the granting of the loan as it deems desirable, including any restrictions on the subordination of the moneys loaned. The attorney general shall assist the department in drafting loan agreements and in collecting on the loan agreement.

b. The loan shall be repayable upon terms and conditions negotiated by the parties. The repay-

ment period shall begin six years following the date when the loan is awarded and end twenty-five years after the date that the repayment period begins. At least four percent of the amount due shall be paid each year to the department. The corporation shall not be subject to a prepayment penalty.

c. The corporation shall not expend moneys originating from the state, including moneys loaned under this section, on political activity or on any attempt to influence legislation.

4. A corporation shall not provide financing to support a person who is any of the following:

a. An agricultural producer, if any of the following applies:

(1) The agricultural producer is a party to a pending action for a violation of chapter 455B concerning a confinement feeding operation in which the person has a controlling interest and the action is commenced in district court by the attorney general.

(2) The agricultural producer or a confinement feeding operation in which the agricultural producer holds a controlling interest is classified as a habitual violator under section 455B.191.

b. An agricultural products processor, if the processor or a person owning a controlling interest in the processor has demonstrated, within the most recent consecutive three-year period prior to the application for financing, a continuous and flagrant disregard for the health and safety of its employees or the quality of the environment. Violations of environmental protection statutes, rules, or regulations shall be reported for the most recent five-year period prior to application. Evidence of such disregard shall include a history of serious or uncorrected violations of state or federal law protecting occupational health and safety or the environment, including but not limited to serious or uncorrected violations of occupational safety and health standards enforced by the division of labor services of the department of workforce development pursuant to chapter 84A, or rules enforced by the environmental protection division of the department of natural resources pursuant to chapter 455B.

c. A member of the economic development board, an employee of the department of economic development, an elected state official, or any director or other officer or an employee of the corporation.

5. In order to be eligible as a qualified Iowa agricultural industry finance corporation, all of the following conditions must be satisfied:

a. The corporation must only provide financing to persons and ventures eligible under section 15E.209.

b. The corporation must demonstrate that it complies with guiding principles for the corporation as provided in section 15E.207.

c. The corporation must adopt policies and procedures which maximize public oversight into

the affairs of the corporation, by providing a forum for public comment, an opportunity for public review of the corporation's actions, and methods to ensure accountability for the expenditure of public moneys loaned to the corporation.

d. The corporation's articles of incorporation must comply with requirements established by the department relating to the capacity and integrity of the corporation to carry out the purposes of this division, including but not limited to all of the following:

(1) The capitalization of the corporation.

(2) The manner in which financing is provided by the corporation, including the manner in which an Iowa agricultural industry finance loan can be used by the corporation.

(3) The composition of the corporation's board of directors. The board must be composed of persons knowledgeable in Iowa agricultural industries including a representative number of individuals experienced and knowledgeable in financing new agricultural industries.

(4) The manner of oversight required by the department or the auditor of state. The articles must provide that the corporation shall submit a report to the governor, the general assembly, and the department. The report shall provide a description of the corporation's activities and a summary of its finances, including financial awards. The report shall be submitted not later than January 10 of each year. The articles shall provide that an audit of the corporation must be conducted each year for the preceding year by a certified public accountant licensed pursuant to chapter 542C. The auditor of state may audit the books and accounts of the corporation at any time. The results of the annual audit and any audit for the current year conducted by the auditor of state shall be included as part of the report.

(5) The execution of an agreement between the corporation and an eligible recipient as required by the department as a condition of providing financing, in which the eligible recipient agrees to become a shareholder in the corporation. If the eligible recipient is an agricultural producer as provided in section 15E.209, the agreement shall provide that the agricultural producer becomes a shareholder of voting common stock in the corporation equal to at least five percent of the financing provided to the agricultural producer pursuant to the agreement. The agreement shall be for a period of not less than ten years. An agreement shall at least provide all of the following:

(a) The establishment of a common stock pricing system. The stock shall be frozen against price appreciation for the first five years of the life of the corporation. The articles shall contain waivers for death and disability.

(b) The maintenance of stock ownership by an eligible recipient until a financial assistance obligation due the corporation is satisfied.

(c) A requirement that the par value of partici-

pating common stock be established prior to providing financial assistance to an eligible recipient.

e. To the extent feasible and fiscally prudent, the corporation must maintain a portfolio which is diversified among the various types of agricultural commodities and agribusiness.

f. Not more than seventy-five percent of moneys originating from the state, including moneys loaned to the corporation pursuant to this section, may be used to finance any one Iowa agricultural industry venture.

g. The corporation may only be terminated by the following methods, unless approved by the department:

(1) Merger or share exchange under chapter 490, division XI.

(2) Dissolution as provided in chapter 490, division XIV, part A.

(3) A sale, lease, exchange, mortgage, pledge, transfer, or other disposition, in one or more transactions of assets of the corporation which has an aggregate market value equal to fifty percent or more of either the aggregate market value of all of the assets of the corporation determined on a consolidated basis, or the aggregate market value of all the outstanding stock of the corporation.

6. The department shall provide for the default of the loan if the qualified corporation does any of the following:

a. Violates a provision of the articles of incorporation or an amendment to the articles of incorporation that is required by this division which violation is not approved by the department.

b. Violates the terms of the loan agreement executed between the department and the corpora-

tion, which violation is not approved by the department.

c. Fails to comply with the requirements of section 15E.205.

d. Completes a transaction, if all of the following apply:

(1) The transaction involves any of the following:

(a) A merger or share exchange under chapter 490, division XI.

(b) The sale, lease, exchange, mortgage, pledge, transfer, or other disposition, in one or more transactions of assets of the corporation which has an aggregate market value equal to fifty percent or more of either the aggregate market value of all of the assets of the corporation determined on a consolidated basis, or the aggregate market value of all the outstanding stock of the corporation.

(2) The surviving entity of a merger or share exchange, or the entity acquiring the assets of the corporation fails to meet the requirements of section 15E.205.

7. In an action to enforce a judgment against a qualified corporation, the interest of the state shall be subrogated to the interests of holders of bonds issued by the corporation.

8. Moneys repaid or collected by the department under this section shall be deposited into the road use tax fund created pursuant to section 312.1.

For future amendment to this section effective July 1, 2002, see 2001 Acts, ch 55, §20, 38

Section not amended; footnote added

CHAPTER 15F

COMMUNITY ATTRACTION AND TOURISM DEVELOPMENT

15F.202 Community attraction and tourism program.

1. The board shall establish and the department, subject to direction and approval by the board, shall administer a community attraction and tourism program to assist communities in the development and creation of multiple-purpose attraction or tourism facilities.

2. A city or county in the state or public organization may submit an application to the board for financial assistance for a project under the program. The assistance shall be provided only from funds, rights, and assets legally available to the board and shall be in the form of grants, loans, forgivable loans, and credit enhancement and financing instruments. The application shall include, but not be limited to, the following information:

a. The total capital investment of the project, including but not limited to costs for construction,

site acquisition, and infrastructure improvement.

b. The amount or percentage of local and private matching moneys which will be or have been provided for the project.

c. The total number of jobs to be created or retained by the project.

d. The need of the community for the project and for the financial assistance.

e. The long-term tax-generating impact of the project.

3. A school district, in cooperation with a city or county, may submit a joint application for financial assistance for a project under the program. The assistance shall be provided only from funds, rights, and assets legally available to the board and shall be in the form of grants, loans, forgivable loans, and credit enhancement and financing instruments. In addition to the information required in subsection 2, the application shall in-

clude a demonstration that the intended future use of the project shall be by both joint applicants.

2001 Acts, ch 185, §37, 38, 49
Subsection 2, unnumbered paragraph 1 amended
Subsection 3 amended

15F.204 Community attraction and tourism fund.

1. A community attraction and tourism fund is created as a separate fund in the state treasury under the control of the board, consisting of any moneys appropriated by the general assembly and any other moneys available to and obtained or accepted by the board for placement in the fund.

2. Payments of interest, repayments of moneys loaned pursuant to this subchapter, and recaptures of grants or loans shall be deposited in the fund.

3. The fund shall be used to provide assistance only from funds, rights, and assets legally available to the board in the form of grants, loans, forgivable loans, and credit enhancements and financing instruments under the community attraction and tourism program established in section 15F.202. An applicant under the community attraction and tourism program shall not receive financial assistance from the fund in an amount exceeding fifty percent of the total cost of the project.

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

5. At the beginning of each fiscal year, the board shall allocate all moneys in the fund in the following manner:

a. One-third of the moneys shall be allocated to provide assistance to cities and counties which meet the following criteria:

(1) A city which has a population of ten thousand or less according to the most recently published census.

(2) A county which has a population that ranks in the bottom thirty-three counties according to the most recently published census.

b. Two-thirds of the moneys shall be allocated to provide assistance to any city and county in the state, which may include a city or county included under paragraph “*a*”.

6. If two or more cities or counties submit a joint project application for financial assistance under the program, all joint applicants must meet the criteria of subsection 5, paragraph “*a*”, in order to receive any moneys allocated under that paragraph.

7. If any portion of the allocated moneys under subsection 5, paragraph “*a*”, has not been awarded by April 1 of the fiscal year for which the allocation is made, the portion which has not been awarded may be utilized by the board to provide financial assistance under the program to any city or county

in the state.

2001 Acts, ch 185, §39, 49
Subsection 3 amended

15F.302 Vision Iowa program.

1. The board shall establish and the department, subject to direction and approval by the board, shall administer a vision Iowa program to assist communities in the development of major tourism facilities.

2. A city or county or a public organization in the state may submit an application to the board for financial assistance for a project under the program. For purposes of this subsection, “*public organization*” means a nonprofit economic development organization or other nonprofit organization that sponsors or supports community or tourism attractions and activities. The financial assistance from the fund shall be provided only from funds, rights, and assets legally available to the board and shall be in the form of grants, loans, forgivable loans, pledges, and credit enhancements and financing instruments. The application shall include, but not be limited to, the following information:

a. The total capital investment of the project, including but not limited to costs for construction, site acquisition, and infrastructure improvement.

b. A description of the proposed financing including the amount or percentage of local and private matching moneys to be provided for the project.

c. The total number of jobs to be created or retained by the project.

d. The need of the community for the project and for financial assistance.

e. The long-term, tax-generating impact of the project.

f. A discussion of how the project meets other criteria established in this subchapter.

g. The projected long-term economic viability of the project, including projected revenues and expenses.

3. A school district, in cooperation with a city or county, may submit a joint application for financial assistance for a project under the program. The financial assistance shall be provided only from funds, rights, and assets legally available to the board and shall be in the form of grants, loans, forgivable loans, and credit enhancements and financing instruments. In addition to the information required in subsection 2, the application shall include a demonstration that the intended future use of the project shall be by both joint applicants.

2001 Acts, ch 185, §40, 41, 49
Subsection 2, unnumbered paragraph 1 amended
Subsection 3 amended

15F.304 Vision Iowa program application review.

1. Applications for assistance under the program shall be submitted to the department. For those applications that meet the eligibility crite-

ria, the department shall provide a staff review and evaluation to the vision Iowa program review committee referred to in subsection 2 and the board.

2. A review committee composed of eight members of the board shall review vision Iowa program applications submitted to the board and make recommendations regarding the applications to the board. The review committee shall consist of members of the board listed in section 15F.102, subsection 2, paragraphs “d” through “h”.

3. When reviewing the applications, the review committee and the department shall consider, in addition to other criteria established in this subchapter, all of the following:

a. Whether wages, benefits, including health benefits, safety, and other attributes of the project would improve the quality of other existing regional or statewide cultural, recreational, entertainment, and educational activities or employment in the community.

b. The extent to which the project would generate additional attraction and tourism opportunities.

c. The ability of the project to produce a long-term, tax-generating economic impact in excess of the proposed financial assistance from the vision Iowa fund.

d. The geographic diversity of the project in combination with other proposed projects.

e. The investment of the city, county, or region

in the overall project.

f. Other funding mechanisms.

g. The long-term economic viability of the project.

h. The extent to which the project has taken the following planning principles into consideration:

(1) Efficient and effective use of land resources and existing infrastructure by encouraging development in areas with existing infrastructure or capacity to avoid costly duplication of services and costly use of land.

(2) Provision for a variety of transportation choices, including pedestrian traffic.

(3) Maintenance of a unique sense of place by respecting local cultural and natural environmental features.

(4) Conservation of open space and farmland and preservation of critical environmental areas.

(5) Promotion of the safety, livability, and revitalization of existing urban and rural communities.

4. Upon review of the recommendations of the review committee, the board shall approve, defer, or deny the applications. If an application is approved, the board may enter into an agreement with the applicant to provide financial assistance authorized under section 15F.302.

2001 Acts, ch 185, §43, 49
Subsection 4 amended

CHAPTER 16

IOWA FINANCE AUTHORITY

16.26 Bonds and notes.

1. The authority may issue its negotiable bonds and notes in principal amounts as, in the opinion of the authority, are necessary to provide sufficient funds for achievement of its corporate purposes, the payment of interest on its bonds and notes, the establishment of reserves to secure its bonds and notes, and all other expenditures of the authority incident to and necessary or convenient to carry out its purposes and powers. The bonds and notes shall be deemed to be investment securities and negotiable instruments within the meaning of and for all purposes of the uniform commercial code.

2. Bonds and notes issued by the authority are payable solely and only out of the moneys, assets, or revenues of the authority, and as provided in the agreement with bondholders or noteholders pledging any particular moneys, assets, or revenues. Bonds or notes are not an obligation of this state or any political subdivision of this state other than the authority within the meaning of any constitutional or statutory debt limitations, but are

special obligations of the authority payable solely and only from the sources provided in this chapter, and the authority may not pledge the credit or taxing power of this state or any political subdivision of this state other than the authority, or make its debts payable out of any moneys except those of the authority.

3. Bonds and notes must be authorized by a resolution of the authority. However, a resolution authorizing the issuance of bonds or notes may delegate to an officer of the authority the power to negotiate and fix the details of an issue of bonds or notes by an appropriate certificate of the authorized officer.

4. Bonds shall:

a. State the date and series of the issue, be consecutively numbered, and state on their face that they are payable both as to principal and interest solely out of the assets of the authority and do not constitute an indebtedness of this state or any political subdivision of this state other than the authority within the meaning of any constitutional or statutory debt limit.

b. Be either registered, registered as to principal only, or in coupon form, issued in denominations as the authority prescribes, fully negotiable instruments under the laws of this state, signed on behalf of the authority with the manual or facsimile signature of the chairperson or vice chairperson, attested by the manual or facsimile signature of the secretary, have impressed or imprinted thereon the seal of the authority or a facsimile of it, and the coupons attached shall be signed with the facsimile signature of the chairperson or vice chairperson, be payable as to interest at rates and at times as the authority determines, be payable as to principal at times over a period not to exceed fifty years from the date of issuance, at places, and with reserved rights of prior redemption, as the authority prescribes, be sold at prices, at public or private sale, and in a manner as the authority prescribes, and the authority may pay all expenses, premiums, and commissions which it deems necessary or advantageous in connection with the issuance and sale, and be issued under and subject to the terms, conditions, and covenants providing for the payment of the principal, redemption premiums, if any, interest, and other terms, conditions, covenants, and protective provisions safeguarding payment, not inconsistent with this chapter, as are found to be necessary by the authority for the most advantageous sale, which may include, but are not limited to, covenants with the holders of the bonds as to:

(1) Pledging or creating a lien, to the extent provided by the resolution, on moneys or property of the authority or moneys held in trust or otherwise by others to secure the payment of the bonds.

(2) Providing for the custody, collection, securing, investment, and payment of any moneys or due to the authority.

(3) The setting aside of reserves or sinking funds and the regulation or disposition of them.

(4) Limitations on the purpose to which the proceeds of sale of an issue of bonds then or thereafter to be issued may be applied.

(5) Limitations on the issuance of additional bonds and on the refunding of outstanding or other bonds.

(6) The procedure by which the terms of a contract with the holders of bonds may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which consent may be given.

(7) The creation of special funds into which moneys of the authority may be deposited.

(8) Vesting in a trustee properties, rights, powers, and duties in trust as the authority determines, which may include the rights, powers, and duties of the trustee appointed for the holders of any issue of bonds pursuant to section 16.28, in which event the provisions of that section authorizing appointment of a trustee by the holders of bonds shall not apply, or limiting or abrogating the right of the holders of bonds to appoint a trustee

under that section, or limiting the rights, duties, and powers of the trustee.

(9) Defining the acts or omissions which constitute a default in the obligations and duties of the authority and providing for the rights and remedies of the holders of bonds in the event of a default. However, rights and remedies shall be consistent with the laws of this state and other provisions of this chapter.

(10) Any other matters which affect the security and protection of the bonds and the rights of the holders.

5. The authority may issue its bonds for the purpose of refunding any bonds or notes of the authority then outstanding, including the payment of any redemption premiums thereon and any interest accrued or to accrue to the date of redemption of the outstanding bonds or notes. Until the proceeds of bonds issued for the purpose of refunding outstanding bonds or notes are applied to the purchase or retirement of outstanding bonds or notes or the redemption of outstanding bonds or notes, the proceeds may be placed in escrow and be invested and reinvested in accordance with the provisions of this chapter. The interest, income, and profits earned or realized on an investment may also be applied to the payment of the outstanding bonds or notes to be refunded by purchase, retirement, or redemption. After the terms of the escrow have been fully satisfied and carried out, any balance of proceeds and interest earned or realized on the investments may be returned to the authority for use by it in any lawful manner. All refunding bonds shall be issued and secured and subject to the provisions of this chapter in the same manner and to the same extent as other bonds issued pursuant to this chapter.

6. The authority may issue negotiable bond anticipation notes and may renew them from time to time but the maximum maturity of the notes, including renewals, shall not exceed ten years from the date of issue of the original notes. Notes are payable from any available moneys of the authority not otherwise pledged, or from the proceeds of the sale of bonds of the authority in anticipation of which the notes were issued. Notes may be issued for any corporate purpose of the authority. Notes shall be issued in the same manner as bonds, and notes and the resolution authorizing them may contain any provisions, conditions, or limitations, not inconsistent with the provisions of this subsection, which the bonds or a bond resolution of the authority may contain. Notes may be sold at public or private sale. In case of default on its notes or violation of any obligations of the authority to the noteholders, the noteholders shall have all the remedies provided in this chapter for bondholders. Notes shall be as fully negotiable as bonds of the authority.

7. A copy of each pledge agreement by or to the authority, including without limitation each bond resolution, indenture of trust or similar agree-

ment, or any revisions or supplements to it shall be filed with the secretary of state and no further filing or other action under chapter 554, article 9 of the uniform commercial code, or any other law of the state shall be required to perfect the security interest in the collateral or any additions to it or substitutions for it, and the lien and trust so created shall be binding from and after the time made against all parties having claims of any kind in tort, contract, or otherwise against the pledgor.

8. Neither the members of the authority nor any person executing its bonds, notes, or other obligations shall be liable personally on the bonds, notes, or other obligations or be subject to any personal liability or accountability by reason of the issuance of the authority's bonds or notes.

9. The authority may make or participate in the making of loans to housing sponsors to provide interim construction financing for the construction or rehabilitation of adequate housing for low or moderate income persons or families, elderly persons or families, and persons or families which include one or more persons with disabilities, and of noninstitutional residential care facilities. An interim construction loan may be made under this section only if the loan is the subject of a commitment from an agency or instrumentality of the United States government or from the authority, to provide long-term financing for the mortgage loan, and interim construction advances made under the interim construction loan will be insured or guaranteed by an agency or instrumentality of the United States government.

2000 Acts, ch 1149, §161, 187
2000 amendment to subsection 7 is effective July 1, 2001; 2000 Acts, ch 1149, §187
Subsection 7 amended

16.92 Real estate transfer — mortgage release certificate.

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

a. "*Division*" means the title guaranty division in the Iowa finance authority.

b. "*Mortgage*" means a mortgage or mortgage lien on an interest in real property in this state given to secure a loan in an original principal amount of five hundred thousand dollars or less.

c. "*Mortgagee*" means the grantee of a mortgage. If a mortgage has been assigned of record, the mortgagee is the last person to whom the mortgage is assigned of record.

d. "*Mortgage servicer*" means the mortgagee or a person other than the mortgagee to whom a mortgagor or the mortgagor's successor in interest is instructed by the mortgagee to send payments on a loan secured by the mortgage. A person transmitting a payoff statement for a mortgage is the mortgage servicer for purposes of such mortgage.

e. "*Mortgagor*" means the grantor of a mortgage.

f. "*Payoff statement*" means a written state-

ment furnished by the mortgage servicer which sets forth all of the following:

(1) The unpaid balance of the loan secured by a mortgage, including principal, interest, and any other charges properly due under or secured by the mortgage, or the amount required to be paid in order to release or partially release the mortgage.

(2) Interest on a per-day basis for an amount set forth pursuant to subparagraph (1).

(3) The address where payment is to be sent or other specific instructions for making a payment.

(4) If after payment of the unpaid balance of the loan secured by the mortgage, the mortgage continues to secure any unpaid obligation due the mortgagee or any unfunded commitment by the mortgagor to the mortgagee, the legal description of the property that will be released from the mortgage.

g. "*Real estate lender or closer*" means a person licensed to regularly lend moneys to be secured by a mortgage on real property in this state, a licensed real estate broker, or a licensed attorney.

2. *Execution of certificate of release.* A duly authorized officer or employee of the division may execute and record a certificate of release in the real property records of each county in which a mortgage is recorded as provided in this section if all of the following are satisfied:

a. The real estate lender or closer has certified in writing to the division all of the following:

(1) That the payoff statement satisfies one of the following:

(a) The statement does not indicate that the mortgage continues to secure an unpaid obligation due the mortgagee or an unfunded commitment by the mortgagor to the mortgagee.

(b) The statement contains the legal description of the property to be released from the mortgage.

(2) That payment was made in accordance with the payoff statement, including a statement as to the date the payment was received by the mortgagee or mortgage servicer, as evidenced by one or more of the following in the records of the real estate lender or closer or its agent:

(a) A bank check, certified check, escrow account check, real estate broker trust account check, or attorney trust account check that was negotiated by the mortgagee or mortgage servicer.

(b) Other documentary evidence of payment to the mortgagee or mortgage servicer.

(3) That more than thirty days have elapsed since the date the payment was sent.

b. The division determines that an effective satisfaction or release of the mortgage has not been executed and recorded within thirty days after the date payment was sent or otherwise made in accordance with a payoff statement.

c. The division, at least thirty days prior to executing the certificate of release, sends by certified mail, to the last known address of the mortgage

servicer, written notice of its intention to execute and record a certificate of release pursuant to this section after expiration of the thirty-day period following the sending of such notice, including instructions to notify the division of any reason why the certificate of release should not be executed and recorded. If, prior to executing and recording the certificate of release, the division receives written notification setting forth a reason satisfactory to the division why the certificate of release should not be executed and recorded by the division, the division shall not execute and record the certificate of release.

3. *Contents.* A certificate of release executed under this section must contain substantially the information set forth as follows:

a. The name of the mortgagor; the name of the original mortgagee, and, if applicable, the mortgage servicer; the date of the mortgage; the date of recording, including the volume and page or other applicable recording information in the real property records where the mortgage is recorded, and the same information for the last recorded assignment of the mortgage.

b. A statement that the original mortgage principal was in an amount of five hundred thousand dollars or less.

c. A statement that the person executing the certificate of release is a duly authorized officer or employee of the division.

d. A statement indicating one of the following:

(1) That the mortgage servicer provided a payoff statement that was used to make payment, and that does not indicate that the mortgage continues to secure any unpaid obligation due the mortgagee or any unfunded commitment by the mortgagor to the mortgagee.

(2) A statement that the certificate is a partial release of the mortgage and the legal description of the property that will be released from the mortgage.

e. A statement that payment was made in accordance with the payoff statement, and the date the payment was received by the mortgagee or mortgage servicer, as evidenced by one or more of the following in the records of the real estate lender or closer or its agent:

(1) A bank check, certified check, escrow account check, real estate broker trust account check, or attorney trust account check that was negotiated by the mortgagee or mortgage servicer.

(2) Other documentary evidence of payment to the mortgagee or mortgage servicer.

f. A statement that more than thirty days have elapsed since the date payment in accordance with the payoff statement was sent.

g. A statement that the division has sent the thirty-day notice required under subsection 2, paragraph "c", and that thirty days have elapsed since the date the notice was sent.

h. A statement that the division has not received written notification of any reason satisfac-

tory to the division why the certificate of release should not be executed and recorded after the expiration of the thirty-day notice period under subsection 2, paragraph "c".

4. *Execution.* A certificate of release under this section shall be executed and acknowledged in the same manner as required by law for the execution of a deed.

5. *Effect.*

a. For purposes of a release or partial release of the mortgage, a certificate of release executed under this section that contains the information and statements required under subsection 3 is prima facie evidence of the facts contained in such release or partial release, is entitled to be recorded with the county recorder where the mortgage is recorded, operates as a release or partial release of the mortgage described in the certificate of release, and may be relied upon by any person who owns or subsequently acquires an interest in the property released from the mortgage. The county recorder shall rely upon the certificate of release to release the mortgage.

b. Recording of a wrongful or erroneous certificate of release by the division shall not relieve the mortgagor, or the mortgagor's successors or assigns on the debt, from personal liability on the loan or on other obligations secured by the mortgage.

c. In addition to any other remedy provided by law, if the division wrongfully or erroneously records a certificate of release under this section, the division is liable to the mortgagee and mortgage servicer for actual damages sustained due to the recording of the certificate of release.

d. Upon payment of a claim relating to the recording of a certificate of release, the division is subrogated to the rights of the claimant against all persons relating to the claim.

6. *Recording.* If a mortgage is recorded in more than one county and a certificate of release or partial release is recorded in one of them, a certified copy of the certificate of release may be recorded in another county with the same effect as the original. In all cases, the certificate of release or partial release shall be entered and indexed in the manner that a satisfaction of mortgage is entered and indexed.

7. *Prior mortgages.*

a. If the real estate lender or closer has notified the division that a mortgage has been paid in full by someone other than the real estate lender or closer, or was paid by the real estate lender or closer under a previous transaction, and an effective release has not been filed of record, the division may execute and record a certificate of release without certification by the real estate lender or closer that payment was made pursuant to a payoff statement and the date payment was received by the mortgagee. A certificate of release filed pursuant to this subsection is subject to the requirements of subsection 2, paragraph "c".

b. For purposes of this subsection, an effective release has not been filed of record if it appears that a mortgagee in the record chain of title to the mortgage has not, either on the mortgagee's own behalf or by the mortgagee's duly appointed servicer or attorney in fact as established of record by a filed servicing agreement or power of attorney, filed of record either an assignment of the mortgage to another mortgagee in the record chain of title to the mortgage or a release of the mortgagee's interest in the mortgage. For the purposes of this subsection and subsection 2, paragraph "c", "mortgage servicer" includes a mortgagee for which an effective release has not been filed of record as provided in this paragraph.

8. *Application.* This section applies only to a mortgage in an original principal amount of five hundred thousand dollars or less.

2001 Acts, ch 24, §15
Subsection 7, paragraph b amended

16.100 Housing improvement fund program.

1. A housing improvement fund is created within the authority. The moneys in the housing improvement fund are annually appropriated to the authority which shall allocate the available funds among and within the programs authorized by this section. Notwithstanding section 8.33, unencumbered or unobligated moneys remaining in the fund on June 30 of any fiscal year shall not revert to any other fund but shall be available for expenditure for subsequent fiscal years. Notwithstanding section 12C.7, interest or earnings on moneys in the fund or appropriated to the fund shall be credited to the fund. The authority may expend up to four percent of the moneys appropriated for the programs in this section for administrative costs of the authority for those programs. The authority may provide financial assistance to a housing sponsor or an individual in the form of loans, guarantees, grants, interest subsidies, or by other means for the programs authorized by this section.

2. By rule, the authority shall establish the following financial assistance programs and provide the requirements for their proper administration:

a. A home maintenance and repair program providing repair services to families which include persons who are elderly or persons with disabilities and which qualify as lower income or very low income families.

b. A rental rehabilitation program for the construction or rehabilitation of single or multifamily rental properties leased to lower income or very low income families.

c. A home ownership incentive program to help lower income and very low income families achieve single family home ownership. Funds provided under this program shall not be restricted to first-time home buyers but shall be limited to

mortgages under fifty-five thousand dollars, except in those areas of the state where the median price of homes exceeds the state average. The assistance provided shall include at least one of the following kinds of assistance:

- (1) Closing costs assistance.
- (2) Down payment assistance.
- (3) Home maintenance and repair assistance.
- (4) Loan processing assistance through a loan endorser review contractor who acts on behalf of the authority in assisting lenders in processing loans that will qualify for government insurance or guarantee or for financing under the authority's mortgage revenue bond program.
- (5) Mortgage insurance program.

Five percent of the moneys expended under this program shall be used to finance the purchase or acquisition, in communities with a population of less than ten thousand, of manufactured homes as defined in 42 U.S.C. § 5403. Moneys available for this purpose which are unencumbered or unobligated at the end of the fiscal year shall revert to the housing improvement fund for reallocation for the next fiscal year.

Not more than fifty percent of the assistance provided under this program shall be provided under subparagraphs (4) and (5). So long as at least one of the kinds of assistance described in subparagraphs (1) through (5) is provided, additional assistance not described in subparagraphs (1) through (5) may also be provided.

3. The authority shall coordinate the programs authorized by this section with the other programs under the jurisdiction of the authority.

4. Each application for financial assistance shall be rated based on local, housing sponsor, and recipient financial commitment, proposals for leveraging other financial assistance, experience with the recipient group involved, consideration for the housing project in the context of overall community needs, including vacancy rate of rental property and ratio of subsidized rental housing to nonsubsidized housing, ability to provide a counseling support system to the recipients, and a demonstrated capability by the housing sponsor to provide follow-up monitoring of recipients to determine if identifiable results have been achieved.

5. For the purposes of this section, "housing sponsor" is a for-profit entity, nonprofit corporation, local government, or a joint venture involving a for-profit entity, nonprofit corporation or local government.

6. None of the funds provided to a housing sponsor under this section shall be used for the costs of administration.

7. During each regular session of the general assembly, the authority shall present, to the appropriate appropriations subcommittee, a report concerning the total estimated resources to be available for expenditure under this section for the next fiscal year and the amount the authority

proposes to allocate to each program under this section.

8. A homelessness advisory committee is created consisting of the executive director or the executive director's designee, the directors or their designees from the departments of economic development, elder affairs, human services, and human rights, and at least three individuals from the private sector to be selected by the executive director. The advisory committee shall advise the authority in coordinating programs that provide

for the homeless.

2001 Acts, ch 61, §11
Subsection 2, paragraph d stricken

16.107 Infrastructure loan program. Repealed by 2001 Acts, ch 61, § 19.

RURAL COMMUNITY 2000 PROGRAM

16.141 through 16.143 Repealed by 2001 Acts, ch 61, § 19.

CHAPTER 16A

ECONOMIC PROTECTIVE AND INVESTMENT AUTHORITY

16A.9 Obligations issued by the authority.

1. The authority may issue its negotiable obligations in principal amounts as, in the opinion of the authority, are necessary to provide sufficient funds for achievement of its corporate purposes, the payment of interest on its obligations, the establishment of reserves to secure its obligations, and all other expenditures of the authority incident to and necessary or convenient to carry out its purposes and powers. The obligations shall be deemed to be investment securities and negotiable instruments within the meaning of and for all purposes of chapter 554, the uniform commercial code.

2. Obligations issued by the authority are payable solely and only out of the moneys, assets, or revenues of the authority, and as provided in agreements with holders of its obligations pledging any particular moneys, assets or revenues. Taxes or appropriations shall not be pledged for the payment of the obligations. Obligations are not an obligation of this state or any political subdivision of this state other than the authority within the meaning of any constitutional or statutory debt limitations, but are special obligations of the authority payable solely and only from the sources provided in this chapter, and the authority shall not pledge the general credit or taxing power of this state or any political subdivision of this state other than the authority, or make its debts payable out of any moneys except those of the authority.

3. Obligations must be authorized by a resolution of the authority. However, a resolution authorizing the issuance of obligations may delegate to an officer of the authority the power to negotiate and fix the details of an issue of bonds or notes by an appropriate certificate of the authorized officer.

4. Obligations shall:

a. State the date and series of the issue, be consecutively numbered, and state on their face that they are payable both as to principal and interest

solely out of the assets of the authority and do not constitute an indebtedness of this state or any political subdivision of this state other than the authority within the meaning of any constitutional or statutory debt limit.

b. Be registered, issued in denominations as the authority prescribes, fully negotiable instruments under the laws of this state, signed on behalf of the authority with the manual or facsimile signature of the chairperson or vice chairperson, attested by the manual or facsimile signature of the secretary, have impressed or imprinted on the obligations the seal of the authority or a facsimile of it, be payable as to interest at rates and at times as the authority determines, be payable as to principal at times over a period not to exceed thirty years from the date of issuance, at places, and with reserved rights of prior redemption, as the authority prescribes, be sold at prices, at public or private sale, and in a manner as the authority prescribes, and the authority may pay all expenses, premiums and commissions which it deems necessary or advantageous in connection with the issuance and sale, and be issued under and subject to the terms, conditions and covenants providing for the payment of the principal, redemption premiums, if any, interest and other terms, conditions, covenants and protective provisions safeguarding payment, not inconsistent with this chapter, as are found to be necessary by the authority for the most advantageous sale, which may include, but are not limited to, covenants with the holders of the obligations as to:

(1) Pledging or creating a lien, to the extent provided by the resolution, on moneys or property of the authority or moneys held in trust or otherwise by others to secure the payment of the obligations.

(2) Providing for the custody, collection, securing, investment and payment of any moneys of or due to the authority.

(3) The setting aside of reserves or sinking funds and the regulation or disposition of them.

(4) Limitations on the purpose to which the proceeds of sale of an issue of obligations then or thereafter to be issued may be applied.

(5) Limitations on the issuance of additional obligations and on the refunding of outstanding or other obligations.

(6) The procedure by which the terms of a contract with the holders of obligations may be amended or abrogated, the amount of obligations the holders of which must consent to the contract, and the manner in which consent may be given.

(7) The creation of special funds into which moneys of the authority may be deposited.

(8) Vesting in a trustee properties, rights, powers and duties in trust as the authority determines, which may include the rights, powers and duties of the trustee appointed for the holders of any issue of obligations pursuant to section 16A.10, in which event the provisions of that section authorizing appointment of a trustee by the holders of obligations shall not apply, or limiting or abrogating the right of the holders of obligations to appoint a trustee under that section, or limiting the rights, duties and powers of the trustee.

(9) Defining the acts or omissions which constitute a default in the obligations and duties of the authority and providing for the rights and remedies of the holders of obligations in the event of a default. However, rights and remedies shall be consistent with the laws of this state.

(10) Any other matters which affect the security and protection of the obligations and the rights of the holders or which the authority deems necessary and advisable in furtherance of its purposes.

c. Include other information and be subject to other terms and conditions as the authority deems necessary and provides by rule.

5. The authority may issue its obligations for the purpose of refunding any obligations of the authority then outstanding, including the payment of any redemption premiums on the obligations and any interest accrued or to accrue to the date of redemption of the outstanding obligations. Until the proceeds of obligations issued for the purpose of refunding outstanding obligations are applied to the purchase or retirement of outstanding obligations or the redemption of outstanding obligations, the proceeds may be placed in escrow and be invested and reinvested in accordance with this chapter. The interest, income and profits earned or realized on an investment may also be applied to the payment of the outstanding obligations to be refunded by purchase, retirement or redemption. After the terms of the escrow have been fully satisfied and carried out, any balance of proceeds and interest earned or realized on the investments may be returned to the authority for use by it in any lawful manner. All refunding obligations shall be issued and secured and subject

to the provisions of this chapter in the same manner and to the same extent as other obligations issued pursuant to this chapter.

6. The authority may issue negotiable obligation anticipation notes and may renew them from time to time but the maximum maturity of the notes, including renewals, shall not exceed ten years from the date of issue of the original notes. Notes are payable from any available moneys of the authority not otherwise pledged, or from the proceeds of the sale of obligations of the authority in anticipation of which the notes were issued. Notes may be issued for any corporate purpose of the authority. Notes shall be issued in the same manner as other obligations, and the resolution authorizing them may contain any provisions, conditions or limitations, not inconsistent with the provisions of this subsection, which the obligation or a resolution of the authority may contain. Notes may be sold at public or private sale. In case of default on its notes or violation of any obligations of the authority to the noteholders, the noteholders shall have all the remedies provided in this chapter for holders of its obligations. Notes shall be as fully negotiable as other obligations of the authority.

7. A copy of each pledge agreement by or to the authority, including without limitation each obligation resolution, indenture of trust or similar agreement, or any revisions or supplements to it shall be filed with the secretary of state and no further filing or other action under chapter 554, article 9 of the uniform commercial code, or any other law of the state shall be required to perfect the security interest in the collateral or any additions to it or substitutions for it, and the lien and trust so created shall be binding from and after the time made against all parties having claims of any kind in tort, contract, or otherwise against the pledgor.

8. Neither the members of the authority nor any person executing its obligations are liable personally on the obligations or are subject to any personal liability or accountability by reason of the issuance of the authority's obligations.

9. The authority may create and establish one or more special funds, to be known as "*reserve funds*", and shall pay into each reserve fund any proceeds of sale of obligations to the extent provided in the resolutions of the authority authorizing their issuance, and any other moneys which may be available to the authority for the purpose of the fund from any other sources. All moneys held in a reserve fund, except as otherwise provided in this chapter, shall be used as required solely for the payment of the principal of obligations secured in whole or in part by the fund or of the sinking fund payments with respect to the obligations, the purchase or redemption of the obligations, the payment of interest on the obliga-

tions or the payments of any redemption premium required to be paid when the obligations are redeemed prior to maturity.

2000 Acts, ch 1149, §162, 187
2000 amendment to subsection 7 is effective July 1, 2001; 2000 Acts, ch 1149, §187
Subsection 7 amended

CHAPTER 17A

IOWA ADMINISTRATIVE PROCEDURE ACT

17A.34 Competition with private enterprise — notice for proposed rules.

When a rule is proposed, the administrative rules coordinator shall make an initial determination of whether the rule may cause a service or product to be offered for sale to the public by a state agency that competes with private enter-

prise. If such a service or product may be offered as a result of the proposed rule, that fact shall be included in the notice of intended action of the rule.

2001 Acts, ch 66, §1
NEW section

CHAPTER 18

DEPARTMENT OF GENERAL SERVICES

18.22 Lubricants and oils — preferences.

The department shall do all of the following:

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

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

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

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

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

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

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

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

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

d. Efforts to inform industry trade associa-

tions about the preference program.

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

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

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

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

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

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

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

(1) "*Bio-based hydraulic fluids, greases, and other industrial lubricants*" means the same as defined by the United States department of agriculture, if the department has adopted such a definition. If the United States department of agriculture has not adopted a definition, "*bio-based hydraulic fluids, greases, and other industrial lubricants*" means hydraulic fluids, greases, and other

lubricants containing a minimum of fifty-one percent soybean oil.

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

2001 Acts, ch 24, §16

Subsection 4, paragraph c, subparagraph (1) amended

18.120 Replacement fund.

1. The state fleet administrator shall maintain a depreciation fund for the purchase of replacement motor vehicles and additions to the fleet. The state fleet administrator’s records shall show the total funds deposited by and credited to each department or agency thereof. At the end of each month, the state fleet administrator shall render a statement to each state department or agency thereof for additions to the fleet and total

depreciation credited to that department or agency. Such depreciation expense shall be paid by the state departments or agencies in the same manner as other expenses of such department are paid, and shall be deposited in the depreciation fund to the credit of the department or agency thereof. The funds credited to each department or agency thereof shall remain the property of the department or agency. However, at the end of each biennium, the state fleet administrator shall cause to revert to the fund from which it accumulated any unassigned depreciation.

2. The department of corrections is not obligated to pay the depreciation expense otherwise required by this section.

2001 Acts, ch 186, §16

Section amended

CHAPTER 19A

DEPARTMENT OF PERSONNEL

Sick leave and vacation incentive and other early termination programs; productivity initiatives; reports to governor and general assembly; 2001 Acts, 2nd Ex, ch 5, §3, 4, 6, 8

19A.1 Creation of department of personnel — responsibilities.

1. A department of personnel is created.
2. The department is the central agency responsible for state personnel management, including the following:
 - a. Policy and program development, workforce planning, and research.
 - b. Employment activities and transactions, including recruitment, examination, and certification of personnel seeking employment or promotion.
 - c. Compensation and benefits, including position classification, wages and salaries, and employee benefits. Employee benefits include, but are not limited to, group medical, dental, life, and long-term disability insurance, workers’ compensation, unemployment benefits, sick leave, deferred compensation, holidays and vacations, tuition reimbursement, and educational leaves. Employee benefits also include the Iowa department of public safety peace officers’ retirement, accident, and disability system and the Iowa public employees’ retirement system, which are maintained as distinct and independent systems within the department.
 - d. Equal employment opportunity, affirmative action, and workforce diversity programs.
 - e. Education, training, and workforce development programs.
 - f. Personnel records and administration, including the audit of all personnel-related documents.
 - g. Employment relations, including the negotiation and administration of collective bargain-

ing agreements on behalf of the executive branch of the state and its departments and agencies as provided in chapter 20. However, the state board of regents, for the purposes of implementing and administering collective bargaining pursuant to chapter 20, shall act as the exclusive representative of the state with respect to its faculty, scientific, and other professional staff.

h. The coordination and management of the state’s human resource information system, except as otherwise required for those employees governed by chapter 262.

3. The following part-time boards and commissions are within the department:

a. The board of trustees of the public safety peace officers’ retirement, accident, and disability system, created by section 97A.5.

b. The investment board of the Iowa public employees’ retirement system created by section 97B.8.

c. The equal opportunity in employment task force created pursuant to executive order, or its successor.

4. Specific powers and duties of the department, its director, and the boards and commissions within the department are set forth in this chapter, chapters 70A, 97A, 97B, and other provisions of law. Section 8.23 applies to the department.

5. The personnel management powers and duties of the department do not extend to the legislative branch or the judicial branch of state government, except for functions related to administering compensation and benefit programs.

Sick leave and vacation incentive and other early termination programs;

productivity initiatives; reports to governor and general assembly; 2001 Acts, 2nd Ex, ch 5, §3, 4, 6, 8

For future amendment to subsection 3, paragraph b, effective July 1, 2002, see 2001 Acts, ch 68, §5, 24

Section not amended; footnotes added

19A.8 Director's duties.

The director, as executive head of the department, shall direct and supervise all of the administrative and technical activities of the department. In addition to the duties imposed by the director elsewhere in this chapter, it shall be the director's duty:

1. To apply and carry out this law and the rules adopted thereunder.

2. To establish and maintain a list of all employees in the executive branch of state government in which there shall be set forth, as to each employee, the class title, pay, status, and other pertinent data. For employees governed by chapter 262, the director shall work collaboratively with the state board of regents to collect such information.

3. To appoint such employees of the department and such experts and special assistants as may be necessary to carry out effectively the provisions of this chapter. Staff employees shall be appointed in accordance with the provisions of this chapter.

4. To foster and develop, in cooperation with appointing authorities and others, programs for the improvement of employee effectiveness, including training, safety, health, counseling, and welfare.

5. To encourage and exercise leadership in the development of effective personnel administration within the several departments of state government, and to make available the facilities of the department of personnel to this end.

6. To investigate the operation and effect of this chapter and of the rules made under it and to report annually the director's findings and recommendations to the governor.

7. To make an annual report to the governor regarding the work of the department and special reports as the director considers desirable.

8. To perform any other lawful acts which the director may consider necessary or desirable to carry out the purposes and provisions of this chapter.

The director shall designate an employee of the department to act for the director in the director's absence or inability from any cause to discharge the powers and duties of this office.

The director may delegate any or all aspects of the recruitment, examination, and selection processes to an agency in the executive branch upon request by that agency. The director shall oversee all activities delegated to that agency.

The director shall utilize appropriate persons, including officers and employees in the executive branch of state government, to assist in the recruitment and examination of applicants for em-

ployment. These officers and employees are not entitled to extra pay for their services, but shall be paid their necessary traveling and other expenses.

The director shall quarterly render a statement to each department or agency which operates in whole or in part from other than general fund appropriations for a pro rata share of the cost of administration of the department of personnel. The expense shall be paid by the state department or agency in the same manner as other expenses of that department or agency are paid and all moneys received shall be deposited in the general fund of the state.

The director shall render monthly a statement to each state department or agency for a pro rata share of the cost of administration of the state employee flexible spending accounts. The expense shall be paid by the state department or agency in the same manner as other expenses of that state department or agency are paid and all moneys received for administration costs shall be deposited in the appropriate fund.

Monthly fee for administration of health insurance plans remitted to health insurance administration fund; 2001 Acts, ch 190, §17

Section not amended; footnote added

19A.9 Rules adopted.

The director shall adopt and may amend rules for the administration and implementation of this chapter in accordance with chapter 17A. Rule-making shall be carried out with due regard to the terms of collective bargaining agreements. A rule shall not supersede a provision of a collective bargaining agreement negotiated under chapter 20. The rules shall provide:

1. For the preparation, maintenance, and revision of a job classification plan that encompasses each job in the executive branch, excluding job classifications under the state board of regents, based upon assigned duties and responsibilities, so that the same general qualifications may reasonably be required for and the same pay plan may be equitably applied to all jobs in the same job classification. The director shall classify the position of every employee in the executive branch, excluding employees of the state board of regents, into one of the classes in the plan. An appointing authority or employee adversely affected by a classification or reclassification decision may file an appeal with the director. Appeals of a classification or reclassification decision shall be exempt from the provisions of section 17A.11 and shall be heard by a committee appointed by the director. The classification or reclassification of a position that would cause the expenditure of additional salary funds shall not become effective if the expenditure of funds would be in excess of the total amount budgeted for the department of the appointing authority until budgetary approval has been obtained from the director of the department of management.

When the public interest requires a decrease or increase of employees in any position or type of

employment not otherwise provided by law, or the creation or abolishment of any position or type of employment, the director, acting in good faith, shall so notify the governor. Thereafter, the position or type of employment shall stand abolished or created and the number of employees therein reduced or increased.

2. For pay plans covering all employees in the executive branch of state government, excluding employees of the state board of regents, after consultation with the governor and appointing authorities, and consistent with the terms of collective bargaining agreements negotiated under chapter 20.

3. For examinations to determine the relative fitness of applicants for employment. Such examinations shall be practical in character and shall relate to such matters as will fairly assess the ability of the applicant to discharge the duties of the position to which appointment is sought.

Where the Code of Iowa establishes certification, registration, or licensing provisions, such documents shall be considered prima facie evidence of basic skills accomplishment and such persons shall be exempt from further basic skills examination.

Vacancies shall be announced publicly at least ten days in advance of the date fixed for the filing of applications therefore, and shall be advertised through the communications media. The director may, however, in the director's discretion, continue to receive applications and examine candidates for a period adequate to assure a sufficient number of eligibles to meet the needs of the system, and may add the names of successful candidates to existing eligible lists.

4. For promotions which shall give appropriate consideration to the applicant's qualifications, record of performance, and conduct. A promotion means a change in the status of an employee from a position in one class to a position in another class having a higher pay grade.

5. For the establishment of lists for appointment and promotion, upon which lists shall be placed the names of successful candidates.

6. For the rejection of applicants who fail to meet reasonable requirements.

7. For the appointment by the appointing authority of a person on the appropriate list to fill a vacancy.

8. For a probation period of six months, excluding educational or training leave, before appointment may be made complete, and during which period a probationer may be discharged or reduced in class or pay. If the employee's services are unsatisfactory, the employee shall be dropped from the payroll on or before the expiration of the probation period. If satisfactory, the appointment shall be deemed permanent. The determination of the appointing authority shall be final and conclusive.

9. For temporary employment for not more

than seven hundred eighty hours in a fiscal year.

10. For provisional employment when there is no appropriate list available. Such provisional employment shall not continue longer than one hundred eighty calendar days.

11. For transfer from a position in one department to a similar position in the same department or another department involving similar qualifications, duties, responsibilities, and salary ranges. Whenever an employee transfers or is transferred from one state department or agency to another state department or agency, the employee's seniority rights, any accumulated sick leave, and accumulated vacation time, as provided in the law, shall be transferred to the new place of employment and credited to the employee. Employees who are subject to contracts negotiated under chapter 20 which include transfer provisions shall be governed by the contract provisions.

12. For reinstatement of persons who have attained permanent status and who resign in good standing or who are laid off from their positions without fault or delinquency on their part.

13. For establishing in cooperation with the appointing authorities a performance management system for all employees in the executive branch of state government, excluding employees of the state board of regents, which shall be considered in determining salary increases; as a factor in promotions; as a factor in determining the order of layoffs and in reinstatement; as a factor in demotions, discharges, and transfers; and for the regular evaluation, at least annually, of the qualifications and performance of those employees.

14. For layoffs by reason of lack of funds or work, or reorganization, and for the recall of employees so laid off, giving consideration in layoffs to the employee's performance record and length of service. An employee who has been laid off may be on a recall list for one year, which list shall be exhausted by the organizational unit enforcing the layoff before selection of an employee may be made from the promotional or nonpromotional list in the employee's classification. Employees who are subject to contracts negotiated under chapter 20 which include layoff and recall provisions shall be governed by the contract provisions.

15. For imposition, as a disciplinary measure, of a suspension from the service without pay for not longer than thirty days.

16. For discharge, suspension, or reduction in job classification or pay grade for any of the following causes: failure to perform assigned duties; inadequacy in performing assigned duties; negligence; inefficiency; incompetence; insubordination; unrehabilitated alcoholism or narcotics addiction; dishonesty; unlawful discrimination; failure to maintain a license, certificate, or qualification necessary for a job classification or position; any act or conduct which adversely affects the employee's performance or the employing agency; or any other good cause for discharge, suspension, or

reduction. The person discharged, suspended, or reduced shall be given a written statement of the reasons for the discharge, suspension, or reduction within twenty-four hours after the discharge, suspension, or reduction. All persons concerned with the administration of this chapter shall use their best efforts to insure that this chapter and the rules adopted hereunder shall not be a means of protecting or retaining unqualified or unsatisfactory employees, and shall discharge, suspend, or reduce in job classification or pay grade all employees who should be discharged, suspended, or reduced for any of the causes stated in this subsection.

17. For establishment of a uniform plan for resolving employee grievances and complaints. Employees who are subject to contracts negotiated under chapter 20 which include grievance and complaint provisions shall be governed by the contract provisions.

18. For attendance regulations, and special leaves of absence, with or without pay, or reduced pay, in the various classes of positions in the executive branch, excluding positions under the state board of regents. Employees who are subject to contracts negotiated under chapter 20 which include leave of absence provisions shall be governed by the contract provisions. Annual sick leave and vacation time shall be granted in accordance with section 70A.1.

19. For the development and operation of programs to improve the work effectiveness and morale of employees in the executive branch, excluding employees of the state board of regents, including training, safety, health, welfare, counseling, recreation, and employee relations.

20. Notwithstanding any provisions to the contrary, no rule or regulation shall be adopted by the department which would deprive the state of Iowa, or any of its agencies or institutions of federal grants or other forms of financial assistance.

21. For veterans preference through a provision that veterans as defined in section 35.1 shall have five points added to the grade or score attained in qualifying examinations for appointment to jobs.

Veterans who have a service-connected disability or are receiving compensation, disability bene-

fits or pension under laws administered by the veterans administration shall have ten points added to the grades attained in qualifying examinations. A veteran who has been awarded the purple heart for disabilities incurred in action shall be considered to have a service-connected disability.

22. For acceptance of the qualifications, requirements, regulations, and general provisions established under other sections of the Code pertaining to professional registration, certification, and licensing.

2001 Acts, ch 147, §1
Subsection 3, unnumbered paragraph 3 amended

19A.15 Printed in Addendum.

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 may, to the extent practicable, contract with a private organization to handle the processing and payment of claims and services rendered under the provisions of this section.

2001 Acts, ch 147, §2
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, diversity, and multicultural programs in state agencies covered by subsection 1 by September 30 of each year to the governor and the general assembly. The report shall include information identifying funding sources and itemized costs, including ad-

ministrative costs, for these programs.

3. The state board of regents shall submit an annual report of the affirmative action, diversity, and multicultural accomplishments of the board and its institutions by January 31 of each year to the general assembly. The report shall include information identifying funding sources and itemized costs, including administrative costs, for these programs.

2001 Acts, ch 147, §3
Subsections 2 and 3 amended

19B.6 Responsibilities of department of personnel and department of management — affirmative action.

The department of personnel shall oversee the

implementation of sections 19B.1 through 19B.5 and shall work with the governor to ensure compliance with those sections, including the attainment of affirmative action goals and timetables, by all state agencies, excluding the state board of regents and its institutions. The department of management shall oversee the implementation of sections 19B.1 through 19B.5 and shall work with the governor to ensure compliance with those sections, including the attainment of affirmative action goals and timetables, by the state board of regents and its institutions.

2001 Acts, ch 147, §4
Section amended

CHAPTER 22

EXAMINATION OF PUBLIC RECORDS (OPEN RECORDS)

22.3 Supervision.

Such examination and copying shall be done under the supervision of the lawful custodian of the records or the custodian's authorized designee. The lawful custodian may adopt and enforce reasonable rules regarding the work and the protection of the records against damage or disorganization. The lawful custodian shall provide a suitable place for the work, but if it is impracticable to do the work in the office of the lawful custodian, the person desiring to examine or copy shall pay any necessary expenses of providing a place for the work. All expenses of the work shall be paid by the person desiring to examine or copy. The lawful custodian may charge a reasonable fee for the services of the lawful custodian or the custodian's authorized designee in supervising the records during the work. If copy equipment is available at the office of the lawful custodian of any public records, the lawful custodian shall provide any person a reasonable number of copies of any public record in the custody of the office upon the payment of a fee. The fee for the copying service as determined by the lawful custodian shall not exceed the cost of providing the service.

2001 Acts, ch 44, §2
Section amended

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. This subsection shall

not be construed to prohibit a postsecondary education institution from disclosing to a parent or guardian information regarding a violation of a federal, state, or local law, or institutional rule or policy governing the use or possession of alcohol or a controlled substance if the child is under the age of twenty-one years and the institution determines that the student committed a disciplinary violation with respect to the use or possession of alcohol or a controlled substance regardless of whether that information is contained in the student's education 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 915.20A. However, the Iowa department of public health shall adopt rules which provide for the sharing of information among agencies and providers concerning the maternal and child health program including but not limited to the statewide child immunization information system, 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 cir-

cumstances 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 and criminal history data 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, procedure, or contract 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. As used in this subsection, "*persons outside of government*" does not include persons or employees of persons who are communicating with respect to a consulting or contractual relationship with a government body or who are communicating with a government body with whom an arrangement for compensation exists. 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. 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 historic preservation officer pertaining to access, disclosure,

and use of archaeological site records.

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

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

23. 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.

24. 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.

25. 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.

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

27. 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.

28. 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.

29. 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.

30. 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.

31. 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.

32. Social security numbers of the owners of unclaimed property reported to the treasurer of state pursuant to section 556.11, subsection 2, included on claim forms filed with the treasurer of state pursuant to section 556.19, included in outdated warrant reports received by the treasurer of state pursuant to section 25.2, or stored in record systems maintained by the treasurer of state for purposes of administering chapter 556, or social security numbers of payees included on state warrants included in records systems maintained by the department of revenue and finance for the purpose of documenting and tracking outdated warrants pursuant to section 25.2.

33. Data processing software, as defined in section 22.3A, which is developed by a government body.

34. A record required under the Iowa financial transaction reporting Act listed in section 529.2, subsection 9.

35. Records of the Iowa department of public health pertaining to participants in the gambling treatment program except as otherwise provided in this chapter.

36. Records of a law enforcement agency or the state department of transportation regarding the issuance of a driver’s license under section 321.189A.

37. Mediation documents as defined in section 679C.1, except written mediation agreements that resulted from a mediation which are signed on behalf of a governing body. However, confidentiality of mediation documents resulting from mediation conducted pursuant to chapter 216 shall be governed by chapter 216.

38. *a.* Records containing information that would disclose, or might lead to the disclosure of, private keys used in a digital signature or other similar technologies as provided in chapter 554D.

b. Records which if disclosed might jeopardize the security of an electronic transaction pursuant to chapter 554D.

39. Information revealing the identity of a packer or a person who sells livestock to a packer as reported to the department of agriculture and land stewardship pursuant to section 202A.2.

40. The portion of a record request that contains an internet protocol number which identifies

the computer from which a person requests a record, whether the person using such computer makes the request through the IowaAccess network or directly to a lawful custodian. However, such record may be released with the express written consent of the person requesting the record.

41. Preliminary findings, reports of these preliminary findings, and investigative reports of the state medical examiner, resulting from the conducting of an autopsy. However, the date, time, specific location, and immediate facts and circumstances surrounding a crime or incident, related to a death that affects the public interest as defined in section 331.802, shall not be kept confidential

under this subsection, except if disclosure would plainly and clearly jeopardize an investigation or pose a clear and present danger to the public safety or the safety of an individual.

42. Information obtained by the commissioner of insurance in the course of an investigation as provided in section 502.603, 523B.8, or 523C.23.

2001 Acts, ch 24, §17; 2001 Acts, ch 108, §1
Future repeal of subsection 39 if substantially similar federal legislation or regulation is implemented; finding and order by secretary of agriculture; 99 Acts, ch 88, §11

Release of Iowa public employees' retirement system records for purposes of administering and monitoring an early termination program; confidentiality maintained by records recipients; 2001 Acts, 2nd Ex, ch 5, §4, 8
Subsection 18, unnumbered paragraph 1 amended
Subsection 20 amended

CHAPTER 23A

NONCOMPETITION BY GOVERNMENT

23A.2 State agencies and political subdivisions not to compete with private enterprise.

1. A state agency or political subdivision shall not, unless specifically authorized by statute, rule, ordinance, or regulation:

a. Engage in the manufacturing, processing, sale, offering for sale, rental, leasing, delivery, dispensing, distributing, or advertising of goods or services to the public which are also offered by private enterprise unless such goods or services are for use or consumption exclusively by the state agency or political subdivision.

b. Offer or provide goods or services to the public for or through another state agency or political subdivision, by intergovernmental agreement or otherwise, in violation of this chapter.

2. The state board of regents or a school corporation may, by rule, provide for exemption from the application of this chapter for the following activities:

a. Goods and services that are directly and reasonably related to the educational mission of an institution or school.

b. Goods and services offered only to students, employees, or guests of the institution or school and which cannot be provided by private enterprise at the same or lower cost.

c. Use of vehicles owned by the institution or school for charter trips offered to the public, full or part-time, or temporary students.

d. Durable medical equipment or devices sold or leased for use off premises of an institution, school, or university of Iowa hospitals or clinics.

e. Goods or services which are not otherwise available in the quantity or quality required by the institution or school.

f. Telecommunications other than radio or television stations.

g. Sponsoring or providing facilities for fitness and recreation.

h. Food service and sales.

i. Sale of books, records, tapes, software, educational equipment, and supplies.

3. After July 1, 1988, before a state agency is permitted to continue to engage in an existing practice specified in subsection 1, that state agency must prepare for public examination documentation showing that the state agency can provide the goods or services at a competitive price. The documentation required by this subsection shall be in accordance with that required by generally accepted accounting principles.

4. If a state agency is authorized by statute to compete with private enterprise, or seeks to gain authorization to compete, the state agency shall prepare for public inspection documentation of all actual costs of the project as required by generally accepted accounting principles.

5. Subsections 1 and 3 do not apply to activities of community action agencies under community action programs, as both are defined in section 216A.91.

6. The director of the department of corrections, with the advice of the state prison industries advisory board, may, by rule, provide for exemptions from this chapter.

7. However, this chapter shall not be construed to impair cooperative agreements between Iowa state industries and private enterprise.

8. The director of the department of corrections, with the advice of the board of corrections, may by rule, provide for exemption from this chapter for vocational-educational programs and farm operations of the department.

9. The state department of transportation may, in accordance with chapter 17A, provide for exemption from the application of subsection 1 for the activities related to highway maintenance, highway design and construction, publication and distribution of transportation maps, state aircraft pool operations, inventory sales to other state

agencies and political subdivisions, equipment management and disposal, vehicle maintenance and repair services for other state agencies, and other similar essential operations.

10. This chapter does not apply to any of the following:

a. The operation of a city enterprise, as defined in section 384.24, subsection 2.

b. The performance of an activity that is an essential corporate purpose of a city, as defined in section 384.24, subsection 3, or which carries out the essential corporate purpose, or which is a general corporate purpose of a city as defined in section 384.24, subsection 4, or which carries out the general corporate purposes.

c. The operation of a city utility, as defined by section 390.1, subsection 3.

d. The performance of an activity by a city that is intended to assist in economic development or tourism.

e. The operation of a county enterprise, as defined in section 331.461, subsection 1, or 331.461, subsection 2.

f. The performance of an activity that is an essential county purpose, as defined in section 331.441, subsection 2, or which carries out the essential county purpose, or which is a general county purpose as defined in section 331.441, subsection 2, or which carries out the general county purpose.

g. The performance of an activity listed as a duty relating to a county service in section 331.381.

h. The performance of an activity listed in section 331.424, as a service for which a supplemental levy may be certified.

i. The performance of an activity by a county that is intended to assist in economic development or tourism.

j. The operation of a public transit system, as defined in chapter 324A, except that charter services, outside of a public transit system's normal service area, shall be conducted in Iowa intrastate commerce under the same conditions, restrictions, and obligations as those contained in 49 C.F.R., Part 604. For purposes of this chapter, the definition and conduct of charter services shall be the same as those contained in 49 C.F.R., Part 604.

k. The following on-campus activities of an institution or school under the control of the state board of regents or a school corporation:

(1) Residence halls.

(2) Student transportation, except as specifically listed in subsection 2, paragraph "c".

(3) Overnight accommodations for participants in programs of the institution or school, visitors to the institution or school, parents, and alumni.

(4) Sponsoring or providing facilities for cultural and athletic events.

(5) Items displaying the emblem, mascot, or logo of the institution or school, or that otherwise

promote the identity of the institution or school and its programs.

(6) Souvenirs and programs relating to events sponsored by or at the institution or school.

(7) Radio and television stations.

(8) Services to patients and visitors at the university of Iowa hospitals and clinics, except as specifically listed in subsection 2, paragraph "d".

(9) Goods, products, or professional services which are produced, created, or sold incidental to the schools' teaching, research, and extension missions.

(10) Services to the public at the Iowa state university college of veterinary medicine.

l. The offering of goods and services to the public as part of a client training program operated by a state resource center under the control of the department of human services provided that all of the following conditions are met:

(1) Any off-campus vocational or employment training program developed or operated by the department of human services for clients of a state resource center is a supported vocational training program or a supported employment program offered by a community-based provider of services or other employer in the community.

(2) (a) If a resident of a state resource center is to participate in an employment or training program which pays a wage in compliance with the federal Fair Labor Standards Act, the state resource center shall develop a community placement plan for the resident. The community placement plan shall identify the services and supports the resident would need in order to be discharged from the state resource center and to live and work in the community. The state resource center shall make reasonable efforts to implement the community placement plan including referring the resident to community-based providers of services.

(b) If a community-based provider of services is unable to accept a resident who is referred by the state resource center, the state resource center shall request and the provider shall indicate in writing to the state resource center the provider's reasons for its inability to accept the resident and describe what is needed to accept the resident.

(c) A resident who cannot be placed in a community placement plan with a community-based provider of services may be placed by the state resource center in an on-campus or off-campus vocational or employment training program. However, prior to placing a resident in an on-campus vocational or employment training program, the state resource center shall seek an off-campus vocational or employment training program offered by a community-based provider who serves the county in which the state resource center is based or the counties contiguous to the county, provided that the resident will not be required to travel for more than thirty minutes one way to obtain services.

If off-campus services cannot be provided by a community-based provider, the state resource

center shall offer the resident an on-campus vocational or employment training program. The on-campus program shall be operated in compliance with the federal Fair Labor Standards Act. At least semiannually, the state resource center shall seek an off-campus community-based vocational or employment training option for each resident placed in an on-campus program. The state resource center shall not place a resident in an off-campus program in which the cost to the state resource center would be in excess of the provider's actual cost as determined by purchase of service rules or if the service would not be reimbursed under the medical assistance program.

(3) The price of any goods and services offered to anyone other than a state agency or a political subdivision shall be at a minimum sufficient to cover the cost of any materials and supplies used in the program and to cover client wages as established in accordance with the federal Fair Labor Standards Act.

(4) Nothing in this paragraph shall be construed to prohibit a state resource center from providing a service a resident needs for compliance with accreditation standards for intermediate

care facilities for persons with mental retardation.

m. The repair, calibration, or maintenance of radiological detection equipment by the emergency management division of the department of public defense.

n. The performance of an activity authorized pursuant to section 8D.11A.

o. The performance of an activity authorized pursuant to section 14B.102, subsection 2, paragraph "l".

2001 Acts, ch 22, §2; 2001 Acts, ch 70, §4
Subsection 10, NEW paragraphs n and o

23A.2A Competition with private industry — notation in legislation.

When a bill or joint resolution is requested, the legislative service bureau shall make an initial determination of whether the bill or joint resolution may cause a service or product to be offered for sale to the public by a state agency or political subdivision that competes with private enterprise. If such a service or product may be offered as a result of the bill or resolution, that fact shall be included in the explanation of the bill or joint resolution.

2001 Acts, ch 66, §2
NEW section

CHAPTER 28

COMMUNITY EMPOWERMENT ACT

28.4 Iowa empowerment board duties.

The Iowa board shall perform the following duties:

1. Perform duties relating to community empowerment areas.

2. Manage and coordinate the provision of grant funding and other moneys made available to community empowerment areas by combining all or portions of appropriations or other revenues as authorized by law.

3. Develop advanced community empowerment area arrangements for those community empowerment areas which were formed in transition from an innovation zone or from a decategorization governance board or which otherwise provide evidence of extensive successful experience in managing services and funding with high levels of community support and input.

4. Identify boards, commissions, committees, and other bodies in state government with overlapping and similar purposes which contribute to redundancy and fragmentation in education, health, and human services programs provided to the public. The board shall also make recommendations to the governor and general assembly as appropriate for increasing coordination between these bodies, for eliminating bureaucratic duplication, for consolidation where appropriate, and for integration of functions to achieve improved results.

5. Assist with the linkage of child welfare and juvenile justice decategorization projects with community empowerment areas.

6. Integrate the duties relating to innovation zones in the place of the innovation zone board created in section 8A.2, Code 1997, until the Iowa board determines the innovation zones have been replaced with community empowerment areas.

7. Coordinate and respond to any requests from a community board relating to any of the following:

a. Waiver of existing rules, federal regulation, or amendment of state law, or removal of other barriers.

b. Pooling and redirecting of existing federal, state, or other public or private funds.

c. Seeking of federal waivers.

d. Consolidating community-level committees, planning groups, and other bodies with common memberships formed in response to state requirements.

In coordinating and responding to the requests, the Iowa board shall work with state agencies and submit proposals to the governor and general assembly as necessary to fulfill requests deemed appropriate by the Iowa board.

8. Provide for maximum flexibility and creativity in the designation and administration of the responsibilities and authority of community empowerment areas.

9. Adopt rules pursuant to chapter 17A as necessary for the designation, governance, and oversight of community empowerment areas and the administration of this chapter. The Iowa board shall provide for community board input in the rules adoption process. The rules shall include but are not limited to the following:

a. Performance indicators for community empowerment areas, community boards, and the services provided under the auspices of the community boards. The performance indicators shall be developed with input from community boards and shall build upon the core indicators of performance for the school ready grant program, as described in section 28.8.

b. Minimum standards to further the provision of equal access to services subject to the authority of community boards.

c. Core functions for home visitation, parent support, and preschool services provided under a school ready children grant.

10. Implement a process for community empowerment areas to identify desired results for improving the quality of life in this state. The process shall allow for consideration of updates, additions, and deletions on a regular basis. The identified desired results shall be submitted to the governor and general assembly.

11. Develop guidelines for recommended coverage and take other actions to assist community empowerment area boards in acquiring necessary insurance or other liability coverage at a reasonable cost. Moneys expended by a community empowerment area board to acquire necessary insurance or other liability coverage shall be considered an administrative cost and implementation expense.

12. *a.* With extensive community involvement, develop and annually update a five-year plan for consolidating, blending, and redistributing state-administered funding streams for children from birth through age five made available to community empowerment area boards.

b. With extensive community involvement, develop and annually update a ten-year plan for consolidating, blending, and redistributing state-administered funding streams for other age groups made available to community empowerment area boards. The focus for the early years of the initial ten-year plan shall be on the efforts of the Iowa board and affected state agencies to facilitate implementation of individual community empowerment area board requests for pooling, consolidating, blending, and redistributing state-administered funding streams for other age groups.

c. Submit plans and plan updates developed under paragraphs “*a*” and “*b*” to the community empowerment areas, the governor, and the general assembly annually in December.

d. The Iowa empowerment board shall regularly make information available identifying community empowerment funding and funding distributed through the funding streams listed under

this paragraph “*d*” to communities. It is the intent of the general assembly that the community empowerment area boards and the administrators of the programs located within the community empowerment areas that are supported by the listed funding streams shall fully cooperate with one another on or before the indicated fiscal years, in order to avoid duplication, enhance efforts, combine planning, and take other steps to best utilize the funding to meet the needs of the families in the areas. The community empowerment area boards and the administrators shall annually submit a report concerning such efforts to the community empowerment office. If a community empowerment area is receiving a school ready children grant, this report shall be an addendum to the annual report required under section 28.8. The state community empowerment facilitator shall compile and summarize the reports which shall be submitted to the governor, general assembly, and Iowa board. The funding streams shall include all of the following:

(1) Moneys for the healthy families Iowa program under section 135.106 by the fiscal year beginning July 1, 2000, and ending June 30, 2001.

(2) Moneys for parent education appropriated in section 279.51 and distributed through the child development coordinating council, by the fiscal year beginning July 1, 2000, and ending June 30, 2001.

(3) Moneys for the preschool children at-risk program appropriated in section 279.51 and distributed through the child development coordinating council, by the fiscal year beginning July 1, 2001, and ending June 30, 2002.

(4) Moneys for home visitation and parent support annually appropriated to the department of human services and distributed or expended through child abuse prevention grants and the family preservation program, by the fiscal year beginning July 1, 2000, and ending June 30, 2001.

e. It is the intent of the general assembly to convene a summit meeting under the auspices of the legislative council during the 2001 legislative interim to consider the issues described in this paragraph. In addition to members of the general assembly, those invited to participate in the meeting may include members of the Iowa empowerment board and community empowerment area boards, representatives of the governor, persons participating in community empowerment initiative services, representatives of programs offered through the funding streams enumerated in paragraph “*d*”, and other persons involved in efforts to achieve the desired results identified for the community empowerment initiative. It is anticipated that those participating in the summit meeting will produce a report with findings and recommendations for consideration during the 2002 legislative session. The issues for consideration at the summit meeting may include but are not limited to the following:

(1) Assessing the status of the efforts to achieve full cooperation between the programs offered through the funding streams identified in paragraph “d” and community empowerment area boards in order to avoid duplication, enhance efforts, combine planning, and take other steps to best utilize public funding to meet the needs of the families in the areas. In addition, the summit participants shall make recommendations as to removing barriers or other steps that may be taken so that the programs and community empowerment area board efforts may be more fully integrated.

(2) Implementing an approach to move toward a statewide equalization of the public funding provided for community empowerment initiative programs and other state funding streams directed to similar purposes.

(3) Identifying other age groups or result areas that may be incorporated within or supported by the community empowerment initiative. In addition, consideration may be given to opportunities identified by the governor for expanding the role of the community empowerment initiative as part of the governor’s efforts to reorganize and redirect state government.

(4) Considering other issues, concerns, and opportunities for the community empowerment initiative identified at the local and state levels.

2001 Acts, ch 106, §1, 4
Subsection 12, NEW paragraph e

28.7 Community empowerment area board responsibilities and authority.

1. A community empowerment area board shall do the following:

a. Designate a public agency of this state, as defined in section 28E.2, a community action agency as defined in section 216A.91, an area education agency established under section 273.2, or a nonprofit corporation, to be the fiscal agent for grant moneys and for other moneys administered by the community board.

b. Administer community empowerment grant moneys available from the state to the community board as provided by law and other federal, state, local, and private moneys made available to the community board. Eligibility for receipt of community empowerment grant moneys shall be limited to those community boards that have developed an approved school ready children grant plan in accordance with this chapter. A community board may apply to the Iowa empowerment board to receive as a community empowerment grant those moneys which would otherwise only be available within the geographic area through categorical funding sources or programs.

c. If a community empowerment area includes a decategorization project, coordinate planning and budgeting with the decategorization governing board. By mutual agreement between the community board and the decategorization governance board, the community board may assume the du-

ties of the decategorization governance board or the decategorization governance board may continue as a committee of the community board.

d. Assume other responsibilities established by law or administrative rule.

2. A community board may do any of the following:

a. Designate one or more committees for oversight of grant moneys awarded to the community empowerment area.

b. Function as a coordinating body for services offered by different entities directed to similar purposes within the community empowerment area.

c. Develop neighborhood bodies for community-level input to the community board and implementation of services.

2001 Acts, ch 106, §2, 4
Subsection 1, paragraph a amended

28.9 Iowa empowerment fund.

1. An Iowa empowerment fund is created in the state treasury. The moneys in the Iowa empowerment fund are not subject to section 8.33 and shall not be transferred, used, obligated, appropriated, or otherwise encumbered except as provided by law. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the Iowa empowerment fund shall be credited to the fund.

2. A school ready children grants account is created in the Iowa empowerment fund under the authority of the director of the department of education. Moneys credited to the account shall be distributed by the department of education in the form of grants to community empowerment areas pursuant to criteria established by the Iowa board in accordance with law.

3. An early childhood programs grant account is created in the Iowa empowerment fund under the authority of the director of human services. Moneys credited to the account shall be distributed by the department of human services in the form of grants to community empowerment areas pursuant to criteria established by the Iowa board in accordance with law. The criteria shall include but are not limited to a requirement that a community empowerment area must be designated by the Iowa board in accordance with section 28.5, in order to be eligible to receive an early childhood programs grant.

4. Beginning July 1, 1999, unless a different amount is authorized by law, up to three percent, not to exceed sixty thousand dollars, of the school ready children grant moneys distributed under the auspices of the Iowa board to a community empowerment area board may be used by the community board for administrative costs and other implementation expenses.

Maximum grant amount formula; criteria for use of funds; transfer of funds; 98 Acts, ch 1218, §2; 99 Acts, ch 190, §17; 99 Acts, ch 203, §2; 99 Acts, ch 205, §7; 2000 Acts, ch 1228, §2; 2001 Acts, ch 191, §1
Section not amended; footnote revised

CHAPTER 28E

JOINT EXERCISE OF GOVERNMENTAL POWERS

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 eligible electors residing in the district equal in number to at least five percent of the registered voters 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.

2001 Acts, ch 56, §1
Unnumbered paragraph 1 amended

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 eligible electors residing within the district equal in number to at least fifteen percent of the registered voters 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.

2001 Acts, ch 56, §2
Subsection 1 amended

CHAPTER 28F

JOINT FINANCING OF PUBLIC WORKS AND FACILITIES

28F.2 Definitions.

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

1. “*Electric power agency*” means an entity financing or acquiring electric power facilities pursuant to this chapter or chapter 28E or 476A.

2. “*Project*” or “*projects*” means any works or facilities referred to in section 28F.1 and shall include all property real and personal, pertinent

thereto or connected with such project or projects, and the existing works or facilities, if any, to which such project or projects are an extension, addition, betterment, or improvement.

3. “*Public agency*”, “*state*”, and “*private agency*” shall have the meanings prescribed by section 28E.2.

2001 Acts, 1st Ex, ch 4, §3, 36
Section amended

CHAPTER 29A

MILITARY CODE

Printed in Addendum

CHAPTER 29C

EMERGENCY MANAGEMENT

Printed in Addendum

CHAPTER 35A

VETERANS AFFAIRS COMMISSION

35A.12 Military veterans honor guard services.

An honor guard unit made up of members of a recognized military veterans organization as listed in section 35A.2 or 37.2 shall be allowed to

perform any honor guard service on public property.

2001 Acts, ch 96, §1
NEW section

CHAPTER 39

ELECTIONS, ELECTORS, APPOINTMENTS, TERMS AND OFFICERS

39.11 More than one office prohibited.

Statewide elected officials and members of the general assembly shall not hold more than one elective office at a time. All other elected officials shall not hold more than one elective office at the same level of government at a time. This section does not apply to the following offices: county agricultural extension council or soil and water conservation district commission.

2001 Acts, ch 158, §5
Section amended

39.21 Nonpartisan offices.

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

1. County public hospital trustees as required by section 347.25.
2. Soil and water conservation district commissioners as required by section 161A.5.
3. County agricultural extension council members as provided in section 176A.6.

2001 Acts, ch 158, §6

Subsection 1 stricken and subsections 2 – 4 renumbered as 1 – 3

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 election shall be adopted by the board of supervisors upon receipt of a petition signed by eligible electors residing in the township equal in number to 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.

2001 Acts, ch 56, §3

Subsection 1, unnumbered paragraph 2 amended

CHAPTER 40

CONGRESSIONAL DISTRICTS

40.1 Congressional districts.

The state of Iowa is hereby organized and divided into five congressional districts, which shall be composed, respectively, of the following counties:

1. The first district shall consist of the counties of Butler, Bremer, Fayette, Clayton, Black Hawk, Buchanan, Delaware, Dubuque, Jones, Jackson, Clinton, and Scott.

2. The second district shall consist of the counties of Linn, Johnson, Cedar, Washington, Louisa, Muscatine, Wapello, Jefferson, Henry, Des Moines, Wayne, Appanoose, Davis, Van Buren, and Lee.

3. The third district shall consist of the counties of Grundy, Tama, Benton, Polk, Jasper, Poweshiek, Iowa, Marion, Mahaska, Keokuk, Lucas, and Monroe.

4. The fourth district shall consist of the counties of Emmet, Kossuth, Winnebago, Worth, Mitchell, Howard, Winneshiek, Allamakee, Palo Alto, Hancock, Cerro Gordo, Floyd, Chickasaw, Pocahontas, Humboldt, Wright, Franklin, Calhoun, Webster, Hamilton, Hardin, Greene, Boone, Story, Marshall, Dallas, Madison, and Warren.

5. The fifth district shall consist of the counties of Lyon, Osceola, Dickinson, Sioux, O'Brien, Clay, Plymouth, Cherokee, Buena Vista, Woodbury, Ida, Sac, Monona, Crawford, Carroll, Harrison, Shelby, Audubon, Guthrie, Pottawattamie, Cass, Adair, Mills, Montgomery, Adams, Union, Clarke, Fremont, Page, Taylor, Ringgold, and Decatur.

2001 Acts, 1st Ex. ch 1, §1, 6

Constitutional provision, (codified) Art. III, §37

Section stricken and rewritten

CHAPTER 41

STATE SENATORIAL AND REPRESENTATIVE DISTRICTS

41.1 Representative districts.

The state of Iowa is hereby divided into one hundred representative districts as follows:

1. The first representative district in Woodbury county shall consist of that portion of the city of Sioux City bounded by a line commencing at the point the boundary of the state of Iowa intersects the north boundary of Woodbury county, then proceeding east along the boundary of Woodbury county until it intersects Hamilton boulevard, then proceeding southwesterly along Hamilton boulevard until it intersects Buckwalter drive, then proceeding easterly, then southerly, along Buckwalter drive until it intersects Outer Drive

North, then proceeding west along Outer Drive North until it intersects Cheyenne boulevard, then proceeding south along Cheyenne boulevard until it intersects Thirty-seventh street, then proceeding west and then north along Thirty-seventh street until it intersects Thirty-eighth street, then proceeding west along Thirty-eighth street until it intersects Jones street, then proceeding south along Jones street until it intersects Twenty-ninth street, then proceeding east along Twenty-ninth street until it intersects Court street, then proceeding south along Court street until it intersects Twenty-eighth street, then proceeding east along Twenty-eighth street until it intersects Court

street, then proceeding south along Court street until it intersects Twenty-sixth street, then proceeding west along Twenty-sixth street until it intersects Jones street, then proceeding south along Jones street until it intersects Twenty-fourth street, then proceeding west along Twenty-fourth street until it intersects Pierce street, then proceeding south along Pierce street until it intersects Twenty-third street, then proceeding east along Twenty-third street until it intersects Nebraska street, then proceeding south along Nebraska street until it intersects Twenty-second street, then proceeding west along Twenty-second street until it intersects Pierce street, then proceeding south along Pierce street until it intersects Sixteenth street, then proceeding west along Sixteenth street until it intersects Summit street, then proceeding southerly along Summit street until it intersects Bluff street, then proceeding southwesterly along Bluff street until it intersects West Eighth street, then proceeding southeast along West Eighth street until it intersects Perry street, then proceeding southwest along Perry street until it intersects West Sixth street, then proceeding northwest along West Sixth street until it intersects Hamilton boulevard, then proceeding southwest along Hamilton boulevard until it intersects the Dakota and Iowa Railroad tracks, then proceeding westerly along the Dakota and Iowa Railroad tracks until it intersects the South Leonard street extension to the Missouri river, then proceeding south along the South Leonard street extension to the boundary of the state of Iowa, then proceeding first west, then in a clockwise manner along the boundary of the state of Iowa to the point of origin.

2. The second representative district in Woodbury county shall consist of that portion of the city of Sioux City bounded by a line commencing at the point the north boundary of Woodbury county intersects Hamilton boulevard, then proceeding east along the boundary of Woodbury county until it intersects the east corporate limit of the city of Sioux City, then proceeding southerly along the corporate limits of the city of Sioux City until it intersects Correctionville road, then proceeding west along Correctionville road until it intersects South Westcott street, then proceeding south along South Westcott street until it intersects Gordon drive, then proceeding west along Gordon drive until it intersects South Court street, then proceeding south along South Court street and its extension to the Missouri river until it intersects the boundary of the state of Iowa, then proceeding westerly along the boundary of the state of Iowa until it intersects the South Leonard street extension to the Missouri river, then proceeding north along the South Leonard street extension until it intersects the Dakota and Iowa Railroad tracks, then proceeding easterly along the Dakota and Iowa Railroad tracks until it intersects Hamilton boulevard, then proceeding northeast along Ham-

ilton boulevard until it intersects West Sixth street, then proceeding southeast along West Sixth street until it intersects Perry street, then proceeding northeast along Perry street until it intersects West Eighth street, then proceeding northwest along West Eighth street until it intersects Bluff street, then proceeding northeasterly along Bluff street until it intersects Summit street, then proceeding northerly along Summit street until it intersects Sixteenth street, then proceeding east along Sixteenth street until it intersects Pierce street, then proceeding north along Pierce street until it intersects Twenty-second street, then proceeding east along Twenty-second street until it intersects Nebraska street, then proceeding north along Nebraska street until it intersects Twenty-third street, then proceeding west along Twenty-third street until it intersects Pierce street, then proceeding north along Pierce street until it intersects Twenty-fourth street, then proceeding east along Twenty-fourth street until it intersects Jones street, then proceeding north along Jones street until it intersects Twenty-sixth street, then proceeding east along Twenty-sixth street until it intersects Court street, then proceeding north along Court street until it intersects Twenty-eighth street, then proceeding west along Twenty-eighth street until it intersects Court street, then proceeding north along Court street until it intersects Twenty-ninth street, then proceeding west along Twenty-ninth street until it intersects Jones street, then proceeding north along Jones street until it intersects Thirty-eighth street, then proceeding east along Thirty-eighth street until it intersects Thirty-seventh street, then proceeding south, and then east, along Thirty-seventh street until it intersects Cheyenne boulevard, then proceeding north along Cheyenne boulevard until it intersects Outer Drive North, then proceeding east along Outer Drive North until it intersects Buckwalter drive, then proceeding northerly, then westerly, along Buckwalter drive until it intersects Hamilton boulevard, then proceeding northeasterly along Hamilton boulevard to the point of origin.

3. The third representative district shall consist of:

a. In Sioux county:

(1) The city of Orange City.

(2) Buncombe, Logan, Nassau, Reading, Sherman, and Washington townships.

b. In Plymouth county, Elgin, Grant, Hancock, Johnson, Liberty, Perry, Plymouth, Portland, Preston, Sioux, Stanton, Washington, Westfield, and America townships.

4. The fourth representative district shall consist of:

a. Lyon county.

b. In Sioux county, Capel, Eagle, Garfield, Lincoln, Settlers, Sheridan, Sioux, Welcome, West Branch, Center, Plato, and Rock townships, and that portion of Holland township lying outside the

corporate limits of the city of Orange City.

5. The fifth representative district shall consist of:

- a. Osceola county.
- b. O'Brien county.
- c. In Sioux county, East Orange, Floyd, Grant, and Lynn townships.
- d. In Clay county, Clay, Douglas, Garfield, Herdland, Lincoln, Logan, Lone Tree, Peterson, Riverton, Summit, Waterford, and Gillett Grove townships.

6. The sixth representative district shall consist of:

- a. Dickinson county.
- b. In Clay county:
 - (1) The city of Spencer.
 - (2) Freeman, Lake, Meadow, and Sioux townships.

7. The seventh representative district shall consist of:

- a. Emmet county.
- b. Palo Alto county.
- c. In Kossuth county:
 - (1) The cities of Wesley and West Bend.
 - (2) Buffalo, Burt, Eagle, German, Grant, Greenwood, Harrison, Hebron, Lincoln, Lotts Creek, Portland, Ramsey, Seneca, Springfield, Swea, Wesley, Fenton, Ledyard, and Plum Creek townships.

(3) That portion of Union township bounded by a line commencing at the point the east boundary of Union township intersects the north corporate limit of the city of Algona, then proceeding first north, and then in a counterclockwise manner along the boundary of Union township until it intersects the west corporate limit of the city of Algona and the east boundary of Cresco township, then proceeding first north, and then in a clockwise manner along the corporate limits of the city of Algona to the point of origin.

8. The eighth representative district shall consist of:

- a. Humboldt county.
- b. Pocahontas county.
- c. In Kossuth county:
 - (1) The city of Algona.
 - (2) Irvington, Luverne, Riverdale, Sherman, Whittemore, and Cresco townships, that portion of Garfield township lying outside the corporate limits of the city of West Bend, that portion of Prairie township lying outside the corporate limits of the city of Wesley, and that portion of Union township not contained in the seventh representative district.

d. In Webster county, Deer Creek, Jackson, and Johnson townships.

9. The ninth representative district shall consist of:

- a. The city of Dows.
- b. Wright county.
- c. In Hamilton county:
 - (1) The city of Webster City.

(2) Blairsburg, Cass, Clear Lake, Freedom, Fremont, Hamilton, Independence, Marion, Webster, and Williams townships.

d. In Webster county, Hardin, Pleasant Valley, Sumner, Webster, and Yell townships, and that portion of Washington township lying outside the corporate limits of the city of Duncombe.

10. The tenth representative district shall consist of:

- a. In Story county:
 - (1) The city of Kelley.
 - (2) Collins, Howard, Indian Creek, Lafayette, Lincoln, Milford, Nevada, New Albany, Palestine, Richland, Sherman, Union, and Warren townships, and that portion of Grant township not contained in the forty-fifth representative district.

b. In Hamilton county, Ellsworth, Lincoln, Lyon, Rose Grove, Scott, and Liberty townships.

11. The eleventh representative district shall consist of:

- a. Winnebago county.
- b. Worth county.
- c. In Hancock county:
 - (1) The city of Garner.
 - (2) Bingham, Boone, Britt, Concord, Crystal, Ellington, Erin, Garfield, Madison, Magor, and Orthel townships.

12. The twelfth representative district shall consist of:

- a. In Cerro Gordo county:
 - (1) The city of Clear Lake.
 - (2) Bath, Clear Lake, Dougherty, Falls, Geneo, Grant, Grimes, Lake, Lime Creek, Lincoln, Mount Vernon, Pleasant Valley, and Union townships.

- b. In Franklin county:
 - (1) The cities of Hampton and Sheffield.
 - (2) Geneva, Grant, Hamilton, Ingham, Lee, Marion, Mott, Oakland, Reeve, Richland, Ross, Scott, West Fork, and Wisner townships, that portion of Morgan township lying outside the corporate limits of the city of Dows, and that portion of Osceola township not contained in the forty-fourth representative district.

c. In Hancock county, Amsterdam, Avery, Liberty, and Twin Lake townships, and that portion of Ell township lying outside the corporate limits of the city of Garner.

13. The thirteenth representative district in Cerro Gordo county shall consist of:

- a. The city of Mason City.
- b. That portion of Mason township lying north of the corporate limits of the city of Mason City.

14. The fourteenth representative district shall consist of:

- a. The city of Riceville.
- b. Floyd county.
- c. Mitchell county.
- d. In Cerro Gordo county, Owen and Portland townships, and that portion of Mason township not contained in the thirteenth representative district.

15. The fifteenth representative district shall consist of:

- a. Chickasaw county.
- b. That portion of Howard county lying outside the corporate limits of the city of Riceville.
- c. In Winneshiek county, Calmar, Fremont, Jackson, Lincoln, Madison, Military, Orleans, Sumner, and Washington townships.

16. The sixteenth representative district shall consist of:

- a. Allamakee county.
- b. In Winneshiek county, Bloomfield, Bluffton, Burr Oak, Canoe, Decorah, Frankville, Glenwood, Hesper, Highland, Pleasant, and Springfield townships.

17. The seventeenth representative district shall consist of:

- a. Butler county.
- b. In Bremer county:
 - (1) The city of Waverly.
 - (2) Douglas, Lafayette, Polk, Warren, and Washington townships, that portion of Jackson township lying outside the corporate limits of the city of Janesville, and that portion of Jefferson township lying outside the corporate limits of the city of Denver.

18. The eighteenth representative district shall consist of:

- a. The cities of Sumner and Janesville.
- b. In Black Hawk county, Bennington, Mt. Vernon, and Washington townships, and that portion of Lester township lying outside the corporate limits of the city of Dunkerton.
- c. In Bremer county:
 - (1) The city of Denver.
 - (2) Franklin, Frederika, Fremont, Le Roy, Maxfield, Dayton, and Sumner townships.
- d. In Fayette county:
 - (1) The city of West Union.
 - (2) Auburn, Banks, Bethel, Center, Clermont, Dover, Eden, Fremont, Harlan, Jefferson, Windsor, and Union townships, and that portion of Oran township lying outside the corporate limits of the city of Fairbank.

19. The nineteenth representative district in Black Hawk county shall consist of:

- a. Union township and that portion of Cedar Falls township lying outside the corporate limits of the city of Cedar Falls.
- b. That portion of the city of Cedar Falls bounded by a line commencing at the point the east corporate limit of the city of Cedar Falls intersects Greenhill drive and its extension to the corporate limits, then proceeding west along Greenhill drive and its extension until it intersects Hillside drive, then proceeding north along Hillside drive until it intersects Valley High drive, then proceeding west along Valley High drive until it intersects Clearview drive, then proceeding north along Clearview drive until it intersects Primrose drive, then proceeding west along Primrose drive until it intersects Rownd street, then proceeding

north along Rownd street until it intersects Orchard drive, then proceeding west along Orchard drive until it intersects McClain drive, then proceeding north along McClain drive until it intersects Maplewood drive, then proceeding westerly along Maplewood drive until it intersects Boulder drive, then proceeding north along Boulder drive until it intersects University avenue, then proceeding west along University avenue until it intersects Grove street, then proceeding north along Grove street until it intersects East Seerley boulevard, then proceeding west along East Seerley boulevard until it intersects West Seerley boulevard, then proceeding west along West Seerley boulevard until it intersects College street, then proceeding south along College street until it intersects University avenue, then proceeding southwest along University avenue until it intersects the corporate limits of the city of Cedar Falls, then proceeding first west, and then in a clockwise manner along the corporate limits of the city of Cedar Falls to the point of origin.

20. The twentieth representative district in Black Hawk county shall consist of:

- a. Lincoln and Black Hawk townships.
- b. That portion of the city of Waterloo bounded by a line commencing at the point Hawkeye road intersects the south corporate limit of the city of Waterloo, then proceeding north along Hawkeye road until it intersects East San Marnan drive, then proceeding west along East San Marnan drive until it intersects Kimball avenue, then proceeding north along Kimball avenue until it intersects West Ridgeway avenue, then proceeding west along West Ridgeway avenue until it intersects Sheridan road, then proceeding north along Sheridan road until it intersects Berkshire road, then proceeding first west, and then northwest, along Berkshire road until it intersects Hampshire road, then proceeding north along Hampshire road until it intersects West Fourth street, then proceeding northeast along West Fourth street until it intersects Campbell avenue, then proceeding west along Campbell avenue until it intersects Fletcher avenue, then proceeding north along Fletcher avenue until it intersects Black Hawk creek, then proceeding northeasterly along Black Hawk creek until it intersects Westfield avenue, then proceeding northwesterly along Westfield avenue until it intersects Ansborough avenue, then proceeding southwestly along Ansborough avenue until it intersects Maynard avenue, then proceeding west along Maynard avenue until it intersects Rainbow drive, then proceeding northwest along Rainbow drive until it intersects the corporate limits of the city of Waterloo, then proceeding first south, and then in a counterclockwise manner along the corporate limits of the city of Waterloo to the point of origin.

c. That portion of the city of Cedar Falls bounded by a line commencing at the point the east corporate limit of the city of Cedar Falls inter-

sects Greenhill drive and its extension to the corporate limits, then proceeding west along Greenhill drive and its extension until it intersects Hillside drive, then proceeding north along Hillside drive until it intersects Valley High drive, then proceeding west along Valley High drive until it intersects Clearview drive, then proceeding north along Clearview drive until it intersects Primrose drive, then proceeding west along Primrose drive until it intersects Rownd street, then proceeding north along Rownd street until it intersects Orchard drive, then proceeding west along Orchard drive until it intersects McClain drive, then proceeding north along McClain drive until it intersects Maplewood drive, then proceeding westerly along Maplewood drive until it intersects Boulder drive, then proceeding north along Boulder drive until it intersects University avenue, then proceeding west along University avenue until it intersects Grove street, then proceeding north along Grove street until it intersects East Seerley boulevard, then proceeding west along East Seerley boulevard until it intersects West Seerley boulevard, then proceeding west along West Seerley boulevard until it intersects College street, then proceeding south along College street until it intersects University avenue, then proceeding southwest along University avenue until it intersects the corporate limits of the city of Cedar Falls, then proceeding first east, and then in a counter-clockwise manner along the corporate limits of the city of Cedar Falls to the point of origin.

21. The twenty-first representative district in Black Hawk county shall consist of:

- a. Orange and Eagle townships.
- b. That portion of the city of Waterloo bounded by a line commencing at the point Hawkeye road intersects the south corporate limit of the city of Waterloo, then proceeding north along Hawkeye road until it intersects East San Marnan drive, then proceeding west along East San Marnan drive until it intersects Kimball avenue, then proceeding north along Kimball avenue until it intersects West Ridgeway avenue, then proceeding west along West Ridgeway avenue until it intersects Sheridan road, then proceeding north along Sheridan road until it intersects Berkshire road, then proceeding first west, and then northwest, along Berkshire road until it intersects Hampshire road, then proceeding north along Hampshire road until it intersects West Fourth street, then proceeding northeast along West Fourth street until it intersects Campbell avenue, then proceeding west along Campbell avenue until it intersects Fletcher avenue, then proceeding north along Fletcher avenue until it intersects Black Hawk creek, then proceeding northeasterly along Black Hawk creek until it intersects Westfield avenue, then proceeding northwesterly along Westfield avenue until it intersects West Conger street, then proceeding northeast along West Conger street until it intersects the middle channel of

the Cedar river, then proceeding southeasterly along the Cedar river until it intersects the corporate limits of the city of Waterloo, then proceeding first south, and then in a clockwise manner along the corporate limits of the city of Waterloo to the point of origin.

22. The twenty-second representative district in Black Hawk county shall consist of:

- a. The cities of Elk Run Heights and Evansdale.

- b. East Waterloo township and that portion of Poyner township not contained in the twenty-third representative district.

- c. That portion of the city of Waterloo bounded by a line commencing at the point Leverssee road intersects the north corporate limit of the city of Waterloo, then proceeding first east, and then in a clockwise manner along the corporate limits of the city of Waterloo until it intersects the Cedar river, then proceeding northwesterly along the Cedar river until it intersects West Conger street, then proceeding southwest along West Conger street until it intersects Ansbrough avenue, then proceeding southwest along Ansbrough avenue until it intersects Maynard avenue, then proceeding west along Maynard avenue until it intersects Rainbow drive, then proceeding northwest along Rainbow drive until it intersects the corporate limits of the city of Waterloo, then proceeding first north, and then in a clockwise manner along the corporate limits of the city of Waterloo to the point of origin.

23. The twenty-third representative district shall consist of:

- a. The city of Fairbank.
- b. Buchanan county.
- c. In Black Hawk county:
 - (1) The city of Dunkerton.
 - (2) Barclay, Big Creek, Cedar, Fox, and Spring Creek townships.

- (3) That portion of Poyner township bounded by a line commencing at the point Indian Creek road intersects the east boundary of Poyner township, then proceeding first south, and then in a clockwise manner along the boundary of Poyner township until it intersects Gilbertville road, then proceeding southeasterly along Gilbertville road until it intersects Indian Creek road, then proceeding southeasterly, then east, along Indian Creek road to the point of origin.

24. The twenty-fourth representative district shall consist of:

- a. Clayton county.
- b. In Delaware county:
 - (1) The city of Delaware.
 - (2) Coffins Grove, Elk, Honey Creek, Oneida, and Richland townships, and that portion of Delaware township lying outside the corporate limits of the city of Manchester.
- c. In Fayette county:
 - (1) The city of Fayette.
 - (2) Fairfield, Illyria, Pleasant Valley, Putnam,

Scott, Smithfield, and Westfield townships.

25. The twenty-fifth representative district shall consist of:

a. Jackson county.

b. In Dubuque county:

(1) Mosalem and Washington townships.

(2) That portion of Table Mound township bounded by a line commencing at the point the boundary of Table Mound township intersects the boundaries of Vernon, Prairie Creek, and Washington townships, then proceeding northerly, then easterly, along the boundary of Table Mound township until it intersects the west boundary of Mosalem township, then proceeding southerly, then westerly, along the boundary of Table Mound township to the point of origin.

c. In Clinton county, Bloomfield, Brookfield, Deep Creek, Elk River, and Waterford townships.

26. The twenty-sixth representative district in Clinton county shall consist of:

a. The city of Clinton.

b. Center and Hampshire townships, and that portion of Camanche township not contained in the eighty-third representative district.

27. The twenty-seventh representative district in Dubuque county shall consist of those portions of Dubuque township and the city of Dubuque bounded by a line commencing at the point the western boundary of Dubuque township intersects Derby Grange road, then proceeding easterly along Derby Grange road until it intersects John F. Kennedy road, then proceeding southeasterly along John F. Kennedy road until it intersects the corporate limits of the city of Dubuque, then proceeding first southeast, and then in a clockwise manner along the corporate limits of the city of Dubuque until it intersects the south boundary of Peru township, then proceeding first northeast, and then in a counterclockwise manner along the boundary of Peru township until it intersects the boundary of the state of Iowa, then proceeding southerly along the boundary of the state of Iowa until it intersects the Peosta channel of the Mississippi river, then proceeding southwesterly along the Peosta channel until it intersects East Sixteenth street, then proceeding southwesterly along East Sixteenth street until it intersects Kerper boulevard, then proceeding northerly along Kerper boulevard until it intersects Fengler street, then proceeding northwest along Fengler street until it intersects the I & M Rail Link tracks, then proceeding southwest along the I & M Rail Link tracks until it intersects the extension of Stafford street, then proceeding westerly along the extension of Stafford street until it intersects Garfield avenue, then proceeding southwest along Garfield avenue until it intersects East Twentieth street, then proceeding southwesterly along East Twentieth street until it intersects Central avenue, then proceeding northwest along Central avenue until it intersects West Twenty-third street, then proceeding southwesterly along West

Twenty-third street until it intersects Valeria street, then proceeding northwesterly along Valeria street until it intersects Kaufmann avenue, then proceeding southeast along Kaufmann avenue until it intersects Hempstead street, then proceeding southwest along Hempstead street until it intersects Montcrest street, then proceeding westerly along Montcrest street until it intersects Portland street, then proceeding southwest along Portland street until it intersects Abbott street, then proceeding south along Abbott street until it intersects Lowell street, then proceeding east along Lowell street until it intersects Harold street, then proceeding south along Harold street until it intersects Clarke drive, then proceeding easterly along Clarke drive until it intersects Foye street, then proceeding southerly along Foye street until it intersects West Locust street, then proceeding west along West Locust street until it intersects Kirkwood street, then proceeding southwest along Kirkwood street until it intersects Cox street, then proceeding southeast along Cox street until it intersects Loras boulevard, then proceeding southwest along Loras boulevard until it intersects Wood street, then proceeding southeast along Wood street until it intersects University avenue, then proceeding east along University avenue until it intersects Delhi street, then proceeding southwest along Delhi street until it intersects West Fifth street, then proceeding southeast along West Fifth street until it intersects College street, then proceeding southerly along College street until it intersects West Third street, then proceeding southwest along West Third street until it intersects North Grandview avenue, then proceeding south along North Grandview avenue until it intersects Hale street, then proceeding west along Hale street until it intersects North Algona street, then proceeding north along North Algona street until it intersects Bennett street, then proceeding west along Bennett street until it intersects McCormick street, then proceeding northerly along McCormick street until it intersects Mineral street, then proceeding west along Mineral street until it intersects O'Hagen street, then proceeding north along O'Hagen street until it intersects Pearl street, then proceeding west along Pearl street until it intersects Finley street, then proceeding northwest along Finley street until it intersects University avenue, then proceeding northeast along University avenue until it intersects Asbury road, then proceeding northwesterly along Asbury road until it intersects Wilbricht lane, then proceeding west along Wilbricht lane until it intersects Flora Park road, then proceeding southwesterly along Flora Park road until it intersects Pennsylvania avenue, then proceeding west along Pennsylvania avenue until it intersects Churchill drive, then proceeding north along Churchill drive until it intersects St. Anne drive, then proceeding west along St. Anne drive until it intersects Carter road, then proceed-

ing north along Carter road until it intersects Hillcrest road, then proceeding west along Hillcrest road until it intersects John F. Kennedy road, then proceeding north along John F. Kennedy road until it intersects Hillcrest road, then proceeding west along Hillcrest road until it intersects Key Largo drive, then proceeding south along Key Largo drive until it intersects Keymeer drive, then proceeding east along Keymeer drive until it intersects Key Way drive, then proceeding south along Key Way drive until it intersects the north fork of Catfish creek, then proceeding west along the north fork of Catfish creek until it intersects the extension of Winne court, then proceeding north along Winne court and its extension until it intersects Hillcrest road, then proceeding east along Hillcrest road until it intersects the north branch of the north fork of Catfish creek, then proceeding northwesterly along the north branch of the north fork of Catfish creek until it intersects the northwest branch of the north fork of Catfish creek, then proceeding northwest along the northwest branch of the north fork of Catfish creek until it intersects Asbury road, then proceeding west along Asbury road until it intersects the corporate limits of the city of Asbury, then proceeding first west, and then in a counterclockwise manner along the corporate limits of the city of Asbury until it intersects the west boundary of Dubuque township, then proceeding north along the boundary of Dubuque township to the point of origin.

28. The twenty-eighth representative district in Dubuque county shall consist of those portions of Dubuque and Table Mound townships and the city of Dubuque bounded by a line commencing at the point Asbury road intersects the east corporate limit of the city of Asbury, then proceeding first south, and then in a clockwise manner along the corporate limits of the city of Asbury until it intersects the west boundary of Dubuque township, then proceeding south along the west boundary of Dubuque township until it intersects the corporate limits of the city of Dubuque, then proceeding first west, and then in a counterclockwise manner along the corporate limits of the city of Dubuque until it intersects the south boundary of Dubuque township, then proceeding east along the south boundary of Dubuque township until it intersects the corporate limits of the city of Dubuque, then proceeding first east, and then in a counterclockwise manner along the corporate limits of the city of Dubuque until it intersects the east boundary of Table Mound township, then proceeding north along the boundary of Table Mound township until it intersects the corporate limits of the city of Dubuque, then proceeding first east, and then in a counterclockwise manner along the corporate limits of the city of Dubuque until it intersects the Peosta channel of the Mississippi river, then proceeding southwesterly along the Peosta channel until it intersects East Sixteenth street, then proceeding southwesterly along East Sixteenth street

until it intersects Kerper boulevard, then proceeding northerly along Kerper boulevard until it intersects Fengler street, then proceeding northwest along Fengler street until it intersects the I & M Rail Link tracks, then proceeding southwest along the I & M Rail Link tracks until it intersects the extension of Stafford street, then proceeding westerly along the extension of Stafford street until it intersects Garfield avenue, then proceeding southwest along Garfield avenue until it intersects East Twentieth street, then proceeding southwest along East Twentieth street until it intersects Central avenue, then proceeding northwest along Central avenue until it intersects West Twenty-third street, then proceeding southwest along West Twenty-third street until it intersects Valeria street, then proceeding northwesterly along Valeria street until it intersects Kaufmann avenue, then proceeding southeast along Kaufmann avenue until it intersects Hempstead street, then proceeding southwest along Hempstead street until it intersects Montcrest street, then proceeding westerly along Montcrest street until it intersects Portland street, then proceeding southwest along Portland street until it intersects Abbott street, then proceeding south along Abbott street until it intersects Lowell street, then proceeding east along Lowell street until it intersects Harold street, then proceeding south along Harold street until it intersects Clarke drive, then proceeding easterly along Clarke drive until it intersects Foye street, then proceeding southerly along Foye street until it intersects West Locust street, then proceeding west along West Locust street until it intersects Kirkwood street, then proceeding southwest along Kirkwood street until it intersects Cox street, then proceeding southeast along Cox street until it intersects Loras boulevard, then proceeding southwest along Loras boulevard until it intersects Wood street, then proceeding southeast along Wood street until it intersects University avenue, then proceeding east along University avenue until it intersects Delhi street, then proceeding southwest along Delhi street until it intersects West Fifth street, then proceeding southeast along West Fifth street until it intersects College street, then proceeding southerly along College street until it intersects West Third street, then proceeding southwest along West Third street until it intersects North Grandview avenue, then proceeding south along North Grandview avenue until it intersects Hale street, then proceeding west along Hale street until it intersects North Algona street, then proceeding north along North Algona street until it intersects Bennett street, then proceeding west along Bennett street until it intersects McCormick street, then proceeding northerly along McCormick street until it intersects Mineral street, then proceeding west along Mineral street until it intersects O'Hagen street, then proceeding north along O'Hagen street until it intersects Pearl street,

then proceeding west along Pearl street until it intersects Finley street, then proceeding northwest along Finley street until it intersects University avenue, then proceeding northeast along University avenue until it intersects Asbury road, then proceeding northwesterly along Asbury road until it intersects Wilbricht lane, then proceeding west along Wilbricht lane until it intersects Flora Park road, then proceeding southwest along Flora Park road until it intersects Pennsylvania avenue, then proceeding west along Pennsylvania avenue until it intersects Churchill drive, then proceeding north along Churchill drive until it intersects St. Anne drive, then proceeding west along St. Anne drive until it intersects Carter road, then proceeding north along Carter road until it intersects Hillcrest road, then proceeding west along Hillcrest road until it intersects John F. Kennedy road, then proceeding north along John F. Kennedy road until it intersects Hillcrest road, then proceeding west along Hillcrest road until it intersects Key Largo drive, then proceeding south along Key Largo drive until it intersects Keymeer drive, then proceeding east along Keymeer drive until it intersects Key Way drive, then proceeding south along Key Way drive until it intersects the north fork of Catfish creek, then proceeding west along the north fork of Catfish creek until it intersects the extension of Winne court, then proceeding north along Winne court and its extension until it intersects Hillcrest road, then proceeding east along Hillcrest road until it intersects the north branch of the north fork of Catfish creek, then proceeding northwesterly along the north branch of the north fork of Catfish creek until it intersects the northwest branch of the north fork of Catfish creek, then proceeding northwest along the northwest branch of the north fork of Catfish creek until it intersects Asbury road, then proceeding west along Asbury road to the point of origin.

29. The twenty-ninth representative district shall consist of:

a. In Johnson county, Big Grove, Cedar, Graham, Hardin, Jefferson, Monroe, Newport, and Oxford townships, that portion of Madison township lying outside the corporate limits of the city of North Liberty, and that portion of Clear Creek township not contained in the thirtieth representative district.

b. In Linn county:

(1) Brown, Buffalo, Franklin, Linn, and Putnam townships.

(2) That portion of College township bounded by a line commencing at the point where the boundary between Fairfax and College townships intersects the boundary of Linn county, then proceeding northerly along the boundary of College township until the point at which it intersects the corporate limits of the city of Cedar Rapids, then proceeding easterly along the corporate limits of the city of Cedar Rapids until it intersects the boundary between College township and Putnam

township, then proceeding southerly along the boundary of College township until it intersects the boundary of Linn county, then westerly along the boundary of Linn county to the point of origin.

(3) That portion of Bertram township bounded by a line commencing at the point where the boundary of Bertram township intersects the boundary of Franklin and Putnam townships, then proceeding northerly, then westerly, along the boundary of Bertram township until it intersects the corporate limits of the city of Cedar Rapids, then proceeding southerly along the corporate limits of the city of Cedar Rapids until it intersects the boundary of Bertram township, then proceeding southeasterly along the boundary of Bertram township to the point of origin.

(4) That portion of Marion and Clinton townships bounded by a line commencing at the point the south boundary of Marion township intersects the corporate limits of the city of Cedar Rapids, then proceeding first northeast, and then in a clockwise manner along the boundary of Marion township until it intersects the boundary of Clinton township at the corporate limits of the city of Cedar Rapids, then proceeding first west, and then in clockwise manner along the corporate limits of the city of Cedar Rapids until it intersects the corporate limits of the city of Marion, then proceeding first east, and then in a counterclockwise manner along the corporate limits of the city of Marion until it intersects U.S. highway 151, then proceeding south along U.S. highway 151 until it intersects the south boundary of Marion township, then proceeding west along the south boundary of Marion township to the point of origin.

30. The thirtieth representative district in Johnson county shall consist of:

a. The cities of Coralville, North Liberty, and Tiffin.

b. Penn township, and that portion of Clear Creek township bounded by a line commencing at the point Kansas avenue northeast intersects the north boundary of Clear Creek township, then proceeding east along the boundary of Clear Creek township until it intersects the corporate limits of the city of North Liberty, then proceeding first south, and then in a counterclockwise manner along the corporate limits of the city of North Liberty to the point of origin.

c. That portion of the city of Iowa City bounded by a line commencing at the point Clear Creek township intersects the corporate limits of the city of Coralville and the west corporate limit of the city of Iowa City, then proceeding first south, and then in a counterclockwise manner along the corporate limits of the city of Iowa City until it intersects state highway 1, then proceeding northeast along state highway 1 until it intersects Mormon Trek boulevard, then proceeding northwesterly, then northerly, along Mormon Trek boulevard until it intersects the corporate limits of the city of Coralville, then proceeding first northwest, and

then in a clockwise manner along the corporate limits of the city of Coralville to the point of origin.

31. The thirty-first representative district shall consist of:

a. Jones county.

b. In Dubuque county, Cascade, Prairie Creek, Taylor, and Whitewater townships, that portion of Dodge township lying outside the corporate limits of the city of Dyersville, and that portion of Vernon township lying outside the corporate limits of the city of Centralia.

32. The thirty-second representative district shall consist of:

a. The city of Dyersville.

b. In Delaware county:

(1) The city of Manchester.

(2) Adams, Bremen, Colony, Hazel Green, Milo, North Fork, Prairie, South Fork, and Union townships, and that portion of Delhi township lying outside the corporate limits of the city of Delaware.

c. In Dubuque county:

(1) The city of Centralia.

(2) Center, Concord, Iowa, Jefferson, Liberty, New Wine, and Peru townships.

(3) That portion of Dubuque township bounded by a line commencing at the point the north corporate limit of the city of Asbury intersects the boundary between Center and Dubuque townships, then proceeding in a clockwise manner along the corporate limits of the city of Asbury until it intersects the boundary between Center and Dubuque townships along Seippel road, then proceeding northerly along the boundary of Dubuque township to the point of origin.

(4) That portion of Dubuque township bounded by a line commencing at the point the western boundary of Dubuque township intersects Derby Grange road, then proceeding easterly along Derby Grange road until it intersects John F. Kennedy road, then proceeding southeasterly along John F. Kennedy road until it intersects the corporate limits of the city of Dubuque, then proceeding in a clockwise manner along the corporate limits of the city of Dubuque until it intersects the north boundary of Dubuque township, then proceeding westerly, then southerly, along the boundary of Dubuque township to the point of origin.

33. The thirty-third representative district in Linn county shall consist of those portions of College, Clinton, and Fairfax townships and the city of Cedar Rapids bounded by a line commencing at the point Sixteenth avenue southwest intersects the west corporate limit of the city of Cedar Rapids, then first proceeding south, and then in a counterclockwise manner along the corporate limits of the city of Cedar Rapids until it intersects the north boundary of Fairfax township, then proceeding west along the north boundary of Fairfax township until it intersects the corporate limits of the city of Cedar Rapids, then proceeding first west, and then in a counterclockwise manner along the corporate limits of the city of Cedar Rap-

ids until it intersects Dean road southwest, then proceeding west along Dean road southwest until it intersects the corporate limits of the city of Cedar Rapids, then proceeding first north, and then in a counterclockwise manner along the corporate limits of the city of Cedar Rapids until it intersects the south boundary of Clinton township, then proceeding east along the south boundary of Clinton township until it intersects the corporate limits of the city of Cedar Rapids, then proceeding first east, and then in a counterclockwise manner along the corporate limits of the city of Cedar Rapids until it intersects the middle channel of the Red Cedar river, then proceeding westerly along the middle channel of the Red Cedar river until it intersects the Nineteenth street extension to the Red Cedar river, then proceeding north along the Nineteenth street extension until it intersects Fifteenth avenue southeast, then proceeding west along Fifteenth avenue southeast until it intersects Twelfth avenue southeast, then proceeding southwest along Twelfth avenue southeast until it intersects the Iowa Northern Railway tracks, then proceeding northwest along the Iowa Northern Railway tracks until it intersects Ninth avenue southeast, then proceeding northeast along Ninth avenue southeast until it intersects Fourteenth street southeast, then proceeding north along Fourteenth street southeast until it intersects Fifth avenue southeast, then proceeding west along Fifth avenue southeast until it intersects Fourteenth street southeast, then proceeding north along Fourteenth street southeast and its extension until it intersects Third avenue southeast, then proceeding northeast along Third avenue southeast until it intersects Fourteenth street southeast, then proceeding northwest along Fourteenth street southeast until it intersects C avenue northeast, then proceeding southwest along C avenue northeast until it intersects Center Point road northeast, then proceeding northwest along Center Point road northeast until it intersects Oakland road northeast, then proceeding northerly along Oakland road northeast until it intersects F avenue northeast, then proceeding southwest along F avenue northeast until it intersects Interstate 380, then proceeding southerly along Interstate 380 until it intersects the Union Pacific Railroad tracks, then proceeding northwesterly along the Union Pacific Railroad tracks until it intersects the Chicago Central and Pacific Railroad tracks, then proceeding westerly along the Chicago Central and Pacific Railroad tracks until it intersects the Union Pacific Railroad tracks, then proceeding southerly along the Union Pacific Railroad tracks until it intersects Second avenue southwest, then proceeding northeasterly along Second avenue southwest until it intersects Eighth street southwest, then proceeding southeasterly along Eighth street south-

west until it intersects Third avenue southwest, then proceeding northeast along Third avenue southwest until it intersects Seventh street southwest, then proceeding southeasterly along Seventh street southwest until it intersects Fifth avenue southwest, then proceeding west along Fifth avenue southwest until it intersects Eighth street southwest, then proceeding south along Eighth street southwest until it intersects Seventh avenue southwest, then proceeding east along Seventh avenue southwest until it intersects Seventh street southwest, then proceeding south along Seventh street southwest until it intersects Eighth avenue southwest, then proceeding east along Eighth avenue southwest until it intersects Sixth street southwest, then proceeding south along Sixth street southwest until it intersects Tenth avenue southwest, then proceeding west along Tenth avenue southwest until it intersects Sixth street southwest, then proceeding south along Sixth street southwest until it intersects Nineteenth avenue southwest, then proceeding west along Nineteenth avenue southwest until it intersects Fourteenth street southwest and its extension, then proceeding north along the extension of Fourteenth street southwest until it intersects the Union Pacific Railroad tracks, then proceeding southwest along the Union Pacific Railroad tracks until it intersects the Cedar Rapids and Iowa City Railway tracks, then proceeding northeasterly along the Cedar Rapids and Iowa City Railway tracks until it intersects Sixteenth avenue southwest, then proceeding west along Sixteenth avenue southwest until it intersects Eighteenth street southwest, then proceeding north along Eighteenth street southwest until it intersects Eighteenth street northwest, then proceeding north along Eighteenth street northwest until it intersects Johnson avenue northwest, then proceeding west along Johnson avenue northwest until it intersects Edgewood road northwest, then proceeding south along Edgewood road northwest until it intersects Edgewood road southwest, then proceeding south along Edgewood road southwest until it intersects Sixteenth avenue southwest, then proceeding west along Sixteenth avenue southwest to the point of origin.

34. The thirty-fourth representative district in Linn county shall consist of those portions of the city of Cedar Rapids and Clinton township bounded by a line commencing at the point Sixteenth avenue southwest intersects the west corporate limit of the city of Cedar Rapids, then first proceeding west, and then in a clockwise manner along the corporate limits of the city of Cedar Rapids until it intersects the middle channel of the Red Cedar river, then proceeding easterly along the middle channel of the Red Cedar river until it intersects J avenue and its extension to the middle channel of the Red Cedar river, then proceeding first northerly, then easterly, along J avenue and its extension until it intersects J avenue north-

east, then proceeding southwesterly along the extension of J avenue northeast until it intersects the Union Pacific Railroad tracks, then proceeding southeasterly along the Union Pacific Railroad tracks until it intersects the Iowa Northern Railway tracks, then proceeding southerly along the Iowa Northern Railway tracks until it intersects the Chicago Central and Pacific Railroad tracks, then proceeding westerly along the Chicago Central and Pacific Railroad tracks until it intersects the Union Pacific Railroad tracks, then proceeding southerly along the Union Pacific Railroad tracks until it intersects Second avenue southwest, then proceeding northeasterly along Second avenue southwest until it intersects Eighth street southwest, then proceeding southeasterly along Eighth street southwest until it intersects Third avenue southwest, then proceeding northeast along Third avenue southwest until it intersects Seventh street southwest, then proceeding southeasterly along Seventh street southwest until it intersects Fifth avenue southwest, then proceeding west along Fifth avenue southwest until it intersects Eighth street southwest, then proceeding south along Eighth street southwest until it intersects Seventh avenue southwest, then proceeding east along Seventh avenue southwest until it intersects Seventh street southwest, then proceeding south along Seventh street southwest until it intersects Eighth avenue southwest, then proceeding east along Eighth avenue southwest until it intersects Sixth street southwest, then proceeding south along Sixth street southwest until it intersects Tenth avenue southwest, then proceeding west along Tenth avenue southwest until it intersects Sixth street southwest, then proceeding south along Sixth street southwest until it intersects Nineteenth avenue southwest, then proceeding west along Nineteenth avenue southwest until it intersects Fourteenth street southwest and its extension, then proceeding north along the extension of Fourteenth street southwest until it intersects the Union Pacific Railroad tracks, then proceeding southwest along the Union Pacific Railroad tracks until it intersects the Cedar Rapids and Iowa City Railway tracks, then proceeding northeasterly along the Cedar Rapids and Iowa City Railway tracks until it intersects Sixteenth avenue southwest, then proceeding west along Sixteenth avenue southwest until it intersects Eighteenth street southwest, then proceeding north along Eighteenth street southwest until it intersects Eighteenth street northwest, then proceeding north along Eighteenth street northwest until it intersects Johnson avenue northwest, then proceeding west along Johnson avenue northwest until it intersects Edgewood road northwest, then proceeding south along Edgewood road northwest until it intersects Edgewood road southwest, then proceeding south along Edgewood road southwest until it intersects Sixteenth avenue southwest, then proceeding west along Sixteenth

avenue southwest to the point of origin.

35. The thirty-fifth representative district in Linn county shall consist of:

a. The city of Robins.

b. That portion of Marion township bounded by a line commencing at the point Shannon drive and South Mentzer road intersect the boundary of the corporate limits of the city of Robins, then proceeding northerly, then easterly, along the boundary of the corporate limits of the city of Robins until it intersects the corporate limits of the city of Cedar Rapids, then proceeding westerly, then southerly, then westerly, along the corporate limits of the city of Cedar Rapids until it intersects the boundary between Marion and Monroe townships, then proceeding northerly along the boundary of Marion township until it intersects the corporate limits of the city of Robins, then proceeding northerly along the corporate limits of the city of Robins to the point of origin.

c. That portion of the city of Cedar Rapids bounded by a line commencing at the point the south corporate limit of the city of Hiawatha and the corporate limits of the city of Cedar Rapids intersect Interstate 380, then proceeding southeast along Interstate 380 until it intersects Collins road, then proceeding west along Collins road until it intersects Wenig road northeast and its extension, then proceeding south along Wenig road northeast and its extension until it intersects Forty-second street northeast, then proceeding west along Forty-second street northeast until it intersects the west boundary of Monroe township and the corporate limits of the city of Cedar Rapids, then proceeding first west, and then in a clockwise manner along the corporate limits of the city of Cedar Rapids to the point of origin.

d. Boulder, Fayette, Grant, Jackson, Otter Creek, Spring Grove, and Washington townships, that portion of Clinton township not contained in the thirty-third, thirty-fourth, or thirty-eighth representative district, that portion of Fairfax township not contained in the thirty-third representative district, and that portion of Monroe township not contained in the thirty-seventh representative district.

e. That portion of the city of Central City and Maine township bounded by a line commencing at the point the east corporate limit of the city of Central City intersects the boundary of Maine township, then proceeding first south, and then in a clockwise manner along the corporate limits of the city of Central City to the point of origin.

36. The thirty-sixth representative district in Linn county shall consist of:

a. The city of Marion.

b. That portion of Maine township not contained in the thirty-fifth representative district.

c. That portion of Marion township not contained in the twenty-ninth or thirty-fifth representative district.

37. The thirty-seventh representative district

in Linn county shall consist of those portions of Monroe, Marion, and Bertram townships, and the city of Cedar Rapids bounded by a line commencing at the point Thirty-fifth street drive southeast intersects the east corporate limit of the city of Cedar Rapids, then proceeding first north, and then in a counterclockwise manner along the corporate limits of the city of Cedar Rapids until it intersects Interstate 380, then proceeding southeast along Interstate 380 until it intersects Collins road, then proceeding west along Collins road until it intersects Wenig road northeast and its extension, then proceeding south along Wenig road northeast and its extension until it intersects Forty-second street northeast, then proceeding west along Forty-second street northeast until it intersects the west corporate limit of the city of Cedar Rapids, then proceeding first south, and then in a counterclockwise manner along the corporate limits of the city of Cedar Rapids until it intersects the east boundary of Clinton township and the middle channel of the Red Cedar river, then proceeding easterly along the middle channel of the Red Cedar river until it intersects J avenue and its extension to the middle channel of the Red Cedar river, then proceeding first northerly, then easterly, along J avenue and its extension until it intersects J avenue northeast, then proceeding southeasterly along J avenue northeast until it intersects Sierra drive northeast, then proceeding northwest along Sierra drive northeast until it intersects Linmar drive northeast, then proceeding northerly along Linmar drive northeast until it intersects Coldstream avenue northeast, then proceeding east along Coldstream avenue northeast until it intersects Twenty-ninth street northeast, then proceeding east along Twenty-ninth street northeast until it intersects Oakland road northeast, then proceeding south along Oakland road northeast until it intersects Elmhurst drive northeast, then proceeding east along Elmhurst drive northeast until it intersects Robinwood lane northeast, then proceeding easterly along Robinwood lane northeast until it intersects Prairie drive northeast, then proceeding south along Prairie drive northeast until it intersects Twenty-seventh street northeast, then proceeding easterly along Twenty-seventh street northeast until it intersects First avenue east, then proceeding north along First avenue east until it intersects Thirty-fifth street drive southeast, then proceeding east along Thirty-fifth street drive southeast to the point of origin.

38. The thirty-eighth representative district in Linn county shall consist of those portions of Bertram, Clinton, and Marion townships, and the city of Cedar Rapids bounded by a line commencing at the point Interstate 380 intersects the Union Pacific Railroad tracks, then proceeding northwesterly along the Union Pacific Railroad tracks until it intersects the Iowa Northern Railway tracks, then proceeding northerly along the

Iowa Northern Railway tracks until it intersects the Union Pacific Railroad tracks, then proceeding northwesterly along the Union Pacific Railroad tracks until it intersects J avenue northeast and its extension to the railroad tracks, then proceeding first northeast, then southeast, along J avenue northeast and its extension until it intersects Sierra drive northeast, then proceeding northwest along Sierra drive northeast until it intersects Linmar drive northeast, then proceeding northerly along Linmar drive northeast until it intersects Coldstream avenue northeast, then proceeding east along Coldstream avenue northeast until it intersects Twenty-ninth street northeast, then proceeding east along Twenty-ninth street northeast until it intersects Oakland road northeast, then proceeding south along Oakland road northeast until it intersects Elmhurst drive northeast, then proceeding east along Elmhurst drive northeast until it intersects Robinwood lane northeast, then proceeding easterly along Robinwood lane northeast until it intersects Prairie drive northeast, then proceeding south along Prairie drive northeast until it intersects Twenty-seventh street northeast, then proceeding easterly along Twenty-seventh street northeast until it intersects First avenue east, then proceeding north along First avenue east until it intersects Thirty-fifth street drive southeast, then proceeding east along Thirty-fifth street drive southeast until it intersects the corporate limits of the city of Cedar Rapids, then proceeding first south, and then in a clockwise manner along the corporate limits of the city of Cedar Rapids until it intersects the south boundary of Bertram township and the north boundary of Marion township north of Ellwinn lane southeast, then proceeding west along the south boundary of Bertram township until it intersects the corporate limits of the city of Cedar Rapids, then proceeding first south, and then in a clockwise manner along the corporate limits of the city of Cedar Rapids until it intersects the middle channel of the Red Cedar river and the west boundary of Putnam township, then proceeding westerly along the middle channel of the Red Cedar river until it intersects the Nineteenth street extension to the Red Cedar river, then proceeding north along the Nineteenth street extension until it intersects Fifteenth avenue southeast, then proceeding west along Fifteenth avenue southeast until it intersects Twelfth avenue southeast, then proceeding southwest along Twelfth avenue southeast until it intersects the Iowa Northern Railway tracks, then proceeding northwest along the Iowa Northern Railway tracks until it intersects Ninth avenue southeast, then proceeding northeast along Ninth avenue southeast until it intersects Fourteenth street southeast, then proceeding north along Fourteenth street southeast until it intersects Fifth avenue southeast, then proceeding west along Fifth avenue southeast until it intersects Fourteenth street southeast, then

proceeding north along Fourteenth street southeast and its extension until it intersects Third avenue southeast, then proceeding northeast along Third avenue southeast until it intersects Fourteenth street southeast, then proceeding northwest along Fourteenth street southeast until it intersects Fourteenth street northeast, then proceeding northwest along Fourteenth street northeast until it intersects C avenue northeast, then proceeding southwest along C avenue northeast until it intersects Center Point road northeast, then proceeding northwest along Center Point road northeast until it intersects Oakland road northeast, then proceeding northerly along Oakland road northeast until it intersects F avenue northeast, then proceeding southwest along F avenue northeast until it intersects Interstate 380, then proceeding southerly along Interstate 380 to the point of origin.

39. The thirty-ninth representative district shall consist of:

a. Benton county.

b. In Iowa county, Honey Creek, Marengo, and Washington townships.

40. The fortieth representative district shall consist of:

a. Grundy county.

b. In Tama county, Buckingham, Carlton, Carroll, Clark, Crystal, Geneseo, Grant, Highland, Howard, Indian Village, Lincoln, Oneida, Otter Creek, Perry, Spring Creek, Tama, Toledo, and York townships.

41. The forty-first representative district in Jasper county shall consist of Buena Vista, Clear Creek, Elk Creek, Hickory Grove, Independence, Kellogg, Lynn Grove, Malaka, Mariposa, Newton, Palo Alto, Poweshiek, Richland, Rock Creek, and Sherman townships.

42. The forty-second representative district shall consist of:

a. In Jasper county, Des Moines, Mound Prairie, and Washington townships.

b. In Polk county:

(1) The city of Bondurant.

(2) Beaver and Camp townships, that portion of Clay township lying outside the corporate limits of the city of Pleasant Hill, and that portion of Delaware township lying outside the corporate limits of the city of Ankeny and the city of Des Moines and not contained in the sixty-seventh representative district.

(3) That portion of Four Mile township bounded by a line commencing at the point the east corporate limit of the city of Pleasant Hill intersects the north boundary of Four Mile township, then proceeding first east, and then in a clockwise manner along the boundary of Four Mile township until it intersects the corporate limits of the city of Pleasant Hill, then proceeding first north, and then in a counterclockwise manner along the corporate limits of the city of Pleasant Hill to the point of origin.

43. The forty-third representative district in Marshall county shall consist of:

- a. The city of Marshalltown.
- b. Iowa, Liscomb, Marion, Taylor, and Vienna townships.

44. The forty-fourth representative district shall consist of:

- a. Hardin county.

- b. In Franklin county, that portion of the city of Ackley and Osceola township bounded by a line commencing at the point the north corporate limit of the city of Ackley intersects the east boundary of Franklin county, then proceeding first south, and then west along the boundary of Franklin county until it intersects the west corporate limit of the city of Ackley, then proceeding first north, and then in a clockwise manner along the corporate limits of the city of Ackley to the point of origin.

- c. In Marshall county, Bangor, Eden, Greencastle, Jefferson, Liberty, Logan, Minerva, State Center, and Washington townships, and those portions of Le Grand, Marietta, and Timber Creek townships lying outside the corporate limits of the city of Marshalltown.

45. The forty-fifth representative district in Story county shall consist of:

- a. That portion of Washington township lying outside the corporate limits of the city of Kelley.

- b. Those portions of the city of Ames and Grant township bounded by a line commencing at the point the north corporate limit of the city of Ames intersects East Thirteenth street, then proceeding west along East Thirteenth street until it intersects Glendale avenue, then proceeding north along Glendale avenue until it intersects East Sixteenth street, then proceeding west along East Sixteenth street until it intersects Duff avenue, then proceeding south along Duff avenue until it intersects Seventh street, then proceeding west along Seventh street until it intersects Grand avenue, then proceeding south along Grand avenue until it intersects the Union Pacific Railroad tracks, then proceeding westerly, then northerly, along the Union Pacific Railroad tracks until it intersects Thirteenth street, then proceeding west along Thirteenth street until it intersects Squaw creek, then proceeding westerly along Squaw creek until it intersects Clear creek, then proceeding southwesterly along Clear creek until it intersects North Hyland avenue, then proceeding south along North Hyland avenue until it intersects Oakland street, then proceeding west along Oakland street until it intersects North Franklin avenue, then proceeding south along North Franklin avenue until it intersects West street, then proceeding east along West street until it intersects Colorado avenue, then proceeding south along Colorado avenue until it intersects Lincoln way, then proceeding west along Lincoln way until it intersects the corporate limits of the city of Ames, then proceeding first west, and then in a counterclockwise manner along the corporate lim-

its of the city of Ames until it intersects the west boundary of Grant township, then proceeding north along the west boundary of Grant township until it intersects the corporate limits of the city of Ames south of Southeast Sixteenth street, then proceeding first east, and then in a counterclockwise manner along the corporate limits of the city of Ames until it intersects the north boundary of Grant township, then proceeding west along the north boundary of Grant township until it intersects the corporate limits of the city of Ames, then proceeding first north, and then in a counterclockwise manner along the corporate limits of the city of Ames to the point of origin.

46. The forty-sixth representative district shall consist of:

- a. In Boone county:

- (1) The cities of Luther and Madrid.
- (2) Colfax, Garden, and Jackson townships.

- b. In Story county:

- (1) Franklin township.

- (2) That portion of the city of Ames bounded by a line commencing at the point the north corporate limit of the city of Ames intersects East Thirteenth street, then proceeding west along East Thirteenth street until it intersects Glendale avenue, then proceeding north along Glendale avenue until it intersects East Sixteenth street, then proceeding west along East Sixteenth street until it intersects Duff avenue, then proceeding south along Duff avenue until it intersects Seventh street, then proceeding west along Seventh street until it intersects Grand avenue, then proceeding south along Grand avenue until it intersects the Union Pacific Railroad tracks, then proceeding westerly, then northerly, along the Union Pacific Railroad tracks until it intersects Thirteenth street, then proceeding west along Thirteenth street until it intersects Squaw creek, then proceeding westerly along Squaw creek until it intersects Clear creek, then proceeding southwesterly along Clear creek until it intersects North Hyland avenue, then proceeding south along North Hyland avenue until it intersects Oakland street, then proceeding west along Oakland street until it intersects North Franklin avenue, then proceeding south along North Franklin avenue until it intersects West street, then proceeding east along West street until it intersects Colorado avenue, then proceeding south along Colorado avenue until it intersects Lincoln way, then proceeding west along Lincoln way until it intersects the corporate limits of the city of Ames, then proceeding first north, and then in a clockwise manner along the corporate limits of the city of Ames to the point of origin.

47. The forty-seventh representative district shall consist of:

- a. In Dallas county, Adel, Boone, Colfax, Dallas, Des Moines, Grant, Lincoln, Linn, Sugar Grove, Walnut, and Washington townships, and that portion of Van Meter township lying outside the corporate limits of the city of De Soto.

b. In Boone county, Cass township and that portion of Douglas township lying outside the corporate limits of the city of Madrid.

48. The forty-eighth representative district shall consist of:

a. In Dallas county, Beaver and Spring Valley townships.

b. In Boone county, Amaqua, Beaver, Des Moines, Dodge, Grant, Harrison, Marcy, Peoples, Pilot Mound, Union, and Yell townships, and that portion of Worth township lying outside the corporate limits of the city of Luther.

49. The forty-ninth representative district in Webster county shall consist of:

a. The cities of Duncombe and Fort Dodge.

b. Badger, Colfax, Cooper, Douglas, and Newark townships.

50. The fiftieth representative district shall consist of:

a. Calhoun county.

b. Greene county.

c. In Webster county, Burnside, Clay, Dayton, Elkhorn, Fulton, Gowrie, Lost Grove, Otho, and Roland townships.

51. The fifty-first representative district shall consist of:

a. Carroll county.

b. In Crawford county, Goodrich, Iowa, Milford, Nishnabotny, Stockholm, Hayes, Jackson, and West Side townships, that portion of East Boyer township lying outside the corporate limits of the city of Denison, and that portion of Otter Creek township lying outside the corporate limits of the city of Schleswig.

c. In Sac county, Sac, Wall Lake, and Coon Valley townships, and that portion of Viola township lying outside the corporate limits of the city of Wall Lake.

52. The fifty-second representative district shall consist of:

a. Buena Vista county.

b. In Sac county:

(1) The city of Wall Lake.

(2) Boyer Valley, Cedar, Clinton, Cook, Delaware, Douglas, Eden, Eureka, Jackson, Levey, Richland, and Wheeler townships.

53. The fifty-third representative district shall consist of:

a. Cherokee county.

b. In Plymouth county, Elkhorn, Fredonia, Garfield, Henry, Hungerford, Lincoln, Marion, Meadow, Remsen, and Union townships.

c. In Woodbury county:

(1) The city of Correctionville.

(2) Arlington, Banner, Concord, Floyd, Mo-ville, Rutland, Union, and Wolf Creek townships, and that portion of Woodbury township not contained in the fifty-fourth representative district.

54. The fifty-fourth representative district in Woodbury county shall consist of:

a. Those portions of the city of Sioux City and Woodbury township bounded by a line commenc-

ing at the point Correctionville road intersects the east corporate limit of the city of Sioux City, then proceeding first south, and then in a clockwise manner, along the corporate limits of the city of Sioux City until it intersects the corporate limits of the city of Sergeant Bluff, then proceeding first north, and then in a counterclockwise manner along the corporate limits of the city of Sergeant Bluff until it intersects the north boundary of Liberty township, then proceeding westerly along the north boundary of Liberty township until it intersects the boundary of the state of Iowa, then proceeding northerly along the boundary of the state of Iowa until it intersects South Court street and its extension to the Missouri river, then proceeding north along South Court street and its extension until it intersects Gordon drive, then proceeding east along Gordon drive until it intersects South Westcott street, then proceeding north on South Westcott street until it intersects Correctionville road, then proceeding east along Correctionville road to the point of origin.

b. The city of Sergeant Bluff.

55. The fifty-fifth representative district shall consist of:

a. Ida county.

b. In Crawford county:

(1) The cities of Denison and Schleswig.

(2) Boyer, Charter Oak, Denison, Hanover, Morgan, Paradise, Soldier, Washington, Willow, and Union townships.

c. In Woodbury county, Grange, Grant, Lakeport, Liston, Little Sioux, Miller, Morgan, Oto, Sloan, West Fork, and Willow townships, those portions of Rock and Kedron townships lying outside the corporate limits of the city of Correctionville, and that portion of Liberty township lying outside the corporate limits of the city of Sergeant Bluff.

d. In Monona county, Cooper, Maple, and St. Clair townships.

56. The fifty-sixth representative district shall consist of:

a. Harrison county.

b. In Monona county:

(1) The city of Onawa.

(2) Ashton, Belvidere, Center, Fairview, Franklin, Grant, Jordan, Kennebec, Lake, Sherman, Sioux, Soldier, Spring Valley, West Fork, Willow, and Lincoln townships.

c. In Pottawattamie county:

(1) The city of Neola.

(2) Boomer, Crescent, Hazel Dell, Neola, Norwalk, and Rockford townships.

57. The fifty-seventh representative district shall consist of:

a. The city of Shelby.

b. Shelby county.

c. In Pottawattamie county, Knox, Layton, Lincoln, Valley, Waveland, and Wright townships, and that portion of Center township lying outside the corporate limits of the city of Oakland.

d. In Cass county, Bear Grove, Brighton, Cass,

Edna, Grove, Noble, Pleasant, Pymosa, Union, and Washington townships.

58. The fifty-eighth representative district shall consist of:

- a. Adair county.
- b. Audubon county.
- c. Guthrie county.
- d. In Cass county, Benton, Franklin, Grant, Lincoln, Massena, and Victoria townships.

59. The fifty-ninth representative district in Polk county shall consist of that portion of Polk county bounded by a line commencing at the point the north corporate limit of the city of Clive intersects the west boundary of Polk county, then proceeding east along the corporate limits of the city of Clive until the east corporate limit of the city of Clive intersects Hickman road, then proceeding east along Hickman road until it intersects Sixty-third street, then proceeding south along Sixty-third street until it intersects the south corporate limit of the city of Windsor Heights, then proceeding west along the corporate limits of the city of Windsor Heights until it intersects Interstate 235 and the east corporate limit of the city of West Des Moines, then proceeding west along Interstate 235 until it intersects Seventeenth street, then proceeding south along Seventeenth street until it intersects Pleasant street, then proceeding east along Pleasant street until it intersects Sixteenth street, then proceeding southerly along Sixteenth street until it intersects Ashworth road, then proceeding east along Ashworth road until it intersects Sixteenth street, then proceeding south along Sixteenth street until it intersects Grand avenue, then proceeding southwest along Grand avenue until it intersects Vine street, then proceeding west, then northwest, along Vine street until it intersects Thirty-second street, then proceeding southwest along Thirty-second street until it intersects Meadow lane, then proceeding easterly along Meadow lane until it intersects Twenty-eighth street, then proceeding south along Twenty-eighth street until it intersects Giles street, then proceeding west along Giles street until it intersects Thirty-third street, then proceeding southerly along Thirty-third street until it intersects Maple street, then proceeding west along Maple street until it intersects Thirty-fifth court, then proceeding south along Thirty-fifth court and its extension until it intersects the Union Pacific Railroad tracks, then proceeding westerly along the Union Pacific Railroad tracks until it intersects Thirty-ninth street, then proceeding north along Thirty-ninth street until it intersects Western Hills drive, then proceeding westerly along Western Hills drive until it intersects Cody drive, then proceeding west along Cody drive until it intersects Fiftieth street, then proceeding south along Fiftieth street until it intersects E.P. True parkway, then proceeding northwesterly along E.P. True parkway until it intersects Interstate 35, then proceeding north along

Interstate 35 until it intersects the corporate limits of the city of Clive, then proceeding west along the corporate limits of the city of Clive until it intersects the west boundary of Polk county at One Hundred Forty-second street, then proceeding north along the boundary of Polk county to the point of origin.

60. The sixtieth representative district in Polk county shall consist of that portion of Polk county bounded by a line commencing at the point the east corporate limit of the city of West Des Moines intersects Interstate 235, then proceeding west along Interstate 235 until it intersects Seventeenth street, then proceeding south along Seventeenth street until it intersects Pleasant street, then proceeding east along Pleasant street until it intersects Sixteenth street, then proceeding southerly along Sixteenth street until it intersects Ashworth road, then proceeding east along Ashworth road until it intersects Sixteenth street, then proceeding south along Sixteenth street until it intersects Grand avenue, then proceeding southwest along Grand avenue until it intersects Vine street, then proceeding west, then northwest, along Vine street until it intersects Thirty-second street, then proceeding southwest along Thirty-second street until it intersects Meadow lane, then proceeding easterly along Meadow lane until it intersects Twenty-eighth street, then proceeding south along Twenty-eighth street until it intersects Giles street, then proceeding west along Giles street until it intersects Thirty-third street, then proceeding southerly along Thirty-third street until it intersects Maple street, then proceeding west along Maple street until it intersects Thirty-fifth court, then proceeding south along Thirty-fifth court and its extension until it intersects the Union Pacific Railroad tracks, then proceeding westerly along the Union Pacific Railroad tracks until it intersects Thirty-ninth street, then proceeding north along Thirty-ninth street until it intersects Western Hills drive, then proceeding westerly along Western Hills drive until it intersects Cody drive, then proceeding west along Cody drive until it intersects Fiftieth street, then proceeding south along Fiftieth street until it intersects E.P. True parkway, then proceeding northwesterly along E.P. True parkway until it intersects Interstate 35, then proceeding north along Interstate 35 until it intersects the corporate limits of the city of Clive, then proceeding west along the corporate limits of the city of Clive until it intersects the west boundary of Polk county at Fifty-ninth street, then proceeding first south, and then in a counterclockwise manner along the boundary of Polk county until it intersects the east corporate limit of the city of West Des Moines, then proceeding northerly along the corporate limits of the city of West Des Moines to the point of origin.

61. The sixty-first representative district in Polk county shall consist of that portion of the city of Des Moines bounded by a line commencing at

the point the west corporate limit of the city of Des Moines intersects the south boundary of Polk county, then proceeding northerly along the corporate limits of the city of Des Moines until it intersects University avenue, then proceeding east along University avenue until it intersects Forty-second street, then proceeding south along Forty-second street until it intersects Cottage Grove avenue, then proceeding east along Cottage Grove avenue until it intersects Thirty-first street, then proceeding north along Thirty-first street until it intersects University avenue, then proceeding east along University avenue until it intersects Twenty-fifth street, then proceeding south along Twenty-fifth street until it intersects School street, then proceeding west along School street until it intersects Twenty-eighth street, then proceeding south along Twenty-eighth street until it intersects Rollins avenue, then proceeding east along Rollins avenue until it intersects Twenty-sixth street, then proceeding north along Twenty-sixth street until it intersects Rollins avenue, then proceeding east along Rollins avenue until it intersects Twenty-fourth street, then proceeding south along Twenty-fourth street until it intersects Ingersoll avenue, then proceeding east along Ingersoll avenue until it intersects Seventeenth street, then proceeding southeast along Seventeenth street until it intersects Grand avenue, then proceeding west along Grand avenue until it intersects Eighteenth street, then proceeding southerly along Eighteenth street until it intersects Fleur drive, then proceeding southerly along Fleur drive until it intersects Leland avenue, then proceeding east along Leland avenue until it intersects Southwest Eighteenth street, then proceeding south along Southwest Eighteenth street until it intersects Army Post road, then proceeding east along Army Post road until it intersects Southwest Seventeenth street, then proceeding south along Southwest Seventeenth street until it intersects Amos avenue, then proceeding east along Amos avenue until it intersects Southwest Ninth street, then proceeding south along Southwest Ninth street until it intersects the Polk county boundary, then proceeding west along the Polk county boundary to the point of origin.

62. The sixty-second representative district in Polk county shall consist of those portions of the city of Des Moines and Bloomfield township bounded by a line commencing at the point the south boundary of Polk county intersects U.S. highway 69, then proceeding northwesterly along U.S. highway 69 until it intersects Southeast Fourteenth street, then proceeding northerly along Southeast Fourteenth street until it intersects East Bell avenue, then proceeding west along East Bell avenue until it intersects Southeast Fifth street, then proceeding south along Southeast Fifth street until it intersects East Broad street, then proceeding west along East Broad street until it intersects South Union

street, then proceeding north along South Union street until it intersects Olinda avenue, then proceeding west along Olinda avenue until it intersects Southwest Ninth street, then proceeding southerly along Southwest Ninth street until it intersects Park avenue, then proceeding west along Park avenue until it intersects Fleur drive, then proceeding south along Fleur drive until it intersects Leland avenue, then proceeding east along Leland avenue until it intersects Southwest Eighteenth street, then proceeding south along Southwest Eighteenth street until it intersects Army Post road, then proceeding east along Army Post road until it intersects Southwest Seventeenth street, then proceeding south along Southwest Seventeenth street until it intersects Amos avenue, then proceeding east along Amos avenue until it intersects Southwest Ninth street, then proceeding south along Southwest Ninth street until it intersects the Polk county boundary, then proceeding east along the Polk county boundary to the point of origin.

63. The sixty-third representative district shall consist of:

a. That portion of the city of Urbandale in Polk county.

b. That portion of Polk county bounded by a line commencing at the point the east corporate limit of the city of Urbandale intersects the north corporate limit of the city of Des Moines, then proceeding first east, and then in a clockwise manner along the corporate limits of the city of Des Moines until it intersects the middle channel of the Des Moines river, then proceeding northwesterly along the middle channel of the Des Moines river until it intersects the corporate limits of the city of Johnston, then proceeding westerly along the corporate limits of the city of Johnston until it intersects the corporate limits of the city of Urbandale, then proceeding first south, and then in a clockwise manner along the corporate limits of the city of Urbandale to the point of origin.

64. The sixty-fourth representative district in Polk county shall consist of that portion of the city of Des Moines bounded by a line commencing at the point the west corporate limit of the city of Des Moines intersects University avenue, then proceeding east along University avenue until it intersects Forty-first street, then proceeding north along Forty-first street until it intersects Beaver avenue, then proceeding north along Beaver avenue until it intersects Franklin avenue, then proceeding east along Franklin avenue until it intersects Thirty-sixth street, then proceeding south along Thirty-sixth street until it intersects Jefferson avenue, then proceeding east along Jefferson avenue until it intersects Thirtieth street, then proceeding north along Thirtieth street until it intersects Euclid avenue, then proceeding north-west along Euclid avenue until it intersects Douglas avenue, then proceeding east along Douglas avenue until it intersects Thirtieth street, then

proceeding north along Thirtieth street until it intersects Fleming avenue, then proceeding west along Fleming avenue until it intersects Lawnwoods drive, then proceeding north along Lawnwoods drive until it intersects Madison avenue, then proceeding west along Madison avenue until it intersects Lower Beaver road, then proceeding northwest along Lower Beaver road until it intersects the south boundary of Webster township, then proceeding east along the boundary of Webster township until it intersects the north corporate limit of the city of Des Moines, then proceeding first north, and then in a counterclockwise manner along the corporate limits of the city of Des Moines to the point of origin.

65. The sixty-fifth representative district in Polk county shall consist of that portion of the city of Des Moines bounded by a line commencing at the point Lower Beaver road intersects the south boundary of Webster township, then proceeding east along the boundary of Webster township until it intersects the north corporate limit of the city of Des Moines, then proceeding easterly along the corporate limits of the city of Des Moines until it intersects North Union street, then proceeding south along North Union street until it intersects East Euclid avenue, then proceeding east along East Euclid avenue until it intersects East Fourteenth street, then proceeding south along East Fourteenth street until it intersects Arthur avenue, then proceeding west along Arthur avenue until it intersects York street, then proceeding south along York street until it intersects Thompson avenue, then proceeding west along Thompson avenue until it intersects East Ninth street, then proceeding south along East Ninth street until it intersects East Jefferson avenue, then proceeding east along East Jefferson avenue until it intersects East Twelfth street, then proceeding south along East Twelfth street until it intersects East Washington avenue, then proceeding west along East Washington avenue until it intersects Pennsylvania avenue, then proceeding south along Pennsylvania avenue until it intersects East Washington avenue, then proceeding west along East Washington avenue and its extension until it intersects the Des Moines river, then northwesterly along the Des Moines river until it intersects Sixth avenue, then proceeding southerly along Sixth avenue until it intersects Jefferson avenue, then proceeding west along Jefferson avenue until it intersects Thirteenth street, then proceeding north along Thirteenth street until it intersects Jefferson avenue, then proceeding west along Jefferson avenue until it intersects Martin Luther King Jr. parkway, then proceeding southerly along Martin Luther King Jr. parkway until it intersects Forest avenue, then proceeding west along Forest avenue until it intersects Twenty-fifth street, then proceeding south along Twenty-fifth street until it intersects University avenue, then proceeding west along University avenue un-

til it intersects Thirty-first street, then proceeding south along Thirty-first street until it intersects Cottage Grove avenue, then proceeding west along Cottage Grove avenue until it intersects Forty-second street, then proceeding north along Forty-second street until it intersects University avenue, then proceeding east along University avenue until it intersects Forty-first street, then proceeding north along Forty-first street until it intersects Beaver avenue, then proceeding north along Beaver avenue until it intersects Franklin avenue, then proceeding east along Franklin avenue until it intersects Thirty-sixth street, then proceeding south along Thirty-sixth street until it intersects Jefferson avenue, then proceeding east along Jefferson avenue until it intersects Thirtieth street, then proceeding north along Thirtieth street until it intersects Euclid avenue, then proceeding northwest along Euclid avenue until it intersects Douglas avenue, then proceeding east along Douglas avenue until it intersects Thirtieth street, then proceeding north along Thirtieth street until it intersects Fleming avenue, then proceeding west along Fleming avenue until it intersects Lawnwoods drive, then proceeding north along Lawnwoods drive until it intersects Madison avenue, then proceeding west along Madison avenue until it intersects Lower Beaver road, then proceeding northwest along Lower Beaver road to the point of origin.

66. The sixty-sixth representative district in Polk county shall consist of that portion of the city of Des Moines bounded by a line commencing at the point Forest avenue intersects Twenty-fifth street, then proceeding south along Twenty-fifth street until it intersects School street, then proceeding west along School street until it intersects Twenty-eighth street, then proceeding south along Twenty-eighth street until it intersects Rollins avenue, then proceeding east along Rollins avenue until it intersects Twenty-sixth street, then proceeding north along Twenty-sixth street until it intersects Rollins avenue, then proceeding east along Rollins avenue until it intersects Twenty-fourth street, then proceeding south along Twenty-fourth street until it intersects Ingersoll avenue, then proceeding east along Ingersoll avenue until it intersects Seventeenth street, then proceeding southeast along Seventeenth street until it intersects Grand avenue, then proceeding west along Grand avenue until it intersects Eighteenth street, then proceeding southerly along Eighteenth street until it intersects Fleur drive, then proceeding southerly along Fleur drive until it intersects Park avenue, then proceeding east along Park avenue until it intersects Southwest Ninth street, then proceeding northerly along Southwest Ninth street until it intersects Olinda avenue, then proceeding east along Olinda avenue until it intersects South Union street, then proceeding south along South Union street until it intersects East Broad street, then proceeding east

along East Broad street until it intersects Southeast Fifth street, then proceeding north along Southeast Fifth street until it intersects East Bell avenue, then proceeding east along East Bell avenue until it intersects Southeast Fourteenth street, then proceeding northerly along Southeast Fourteenth street until it intersects the Des Moines river, then proceeding northwesterly along the Des Moines river until it intersects Court avenue, then proceeding easterly along Court avenue until it intersects East Court avenue, then proceeding easterly along East Court avenue until it intersects the Union Pacific Railroad tracks, then proceeding southeast along the Union Pacific Railroad tracks until it intersects the Iowa Interstate Railroad tracks, then proceeding east along the Iowa Interstate Railroad tracks until it intersects Southeast Fourteenth street, then proceeding south along Southeast Fourteenth street until it intersects the Union Pacific Railroad tracks, then proceeding east along the Union Pacific Railroad tracks until it intersects the Iowa Interstate Railroad tracks, then proceeding northeast along the Iowa Interstate Railroad tracks until it intersects Southeast Eighteenth street, then proceeding north along Southeast Eighteenth street until it intersects East Eighteenth street, then proceeding north along East Eighteenth street until it intersects Dean avenue, then proceeding west along Dean avenue until it intersects East Seventeenth street, then proceeding northerly along East Seventeenth street until it intersects Lyon street, then proceeding westerly along Lyon street until it intersects East Fifteenth street, then proceeding northwest along East Fifteenth street until it intersects Maple street, then proceeding easterly along Maple street until it intersects East Sixteenth street, then proceeding northwest along East Sixteenth street until it intersects East University avenue, then proceeding west along East University avenue until it intersects East Sixteenth street, then proceeding north along East Sixteenth street until it intersects Cleveland avenue, then proceeding west along Cleveland avenue until it intersects East Twelfth street, then proceeding north along East Twelfth street until it intersects East Washington avenue, then proceeding west along East Washington avenue until it intersects Pennsylvania avenue, then proceeding south along Pennsylvania avenue until it intersects East Washington avenue, then proceeding west along East Washington avenue and its extension until it intersects the Des Moines river, then proceeding northwesterly along the Des Moines river until it intersects Sixth avenue, then proceeding southerly along Sixth avenue until it intersects Jefferson avenue, then proceeding west along Jefferson avenue until it intersects Thirteenth street, then proceeding north along Thirteenth street until it intersects Jefferson avenue, then proceeding west along Jefferson avenue until it intersects Martin Luther King Jr. parkway, then

proceeding southerly along Martin Luther King Jr. parkway until it intersects Forest avenue, then proceeding west along Forest avenue to the point of origin.

67. The sixty-seventh representative district in Polk county shall consist of:

a. Allen township.

b. That portion of Polk county bounded by a line commencing at the point Easton boulevard intersects the east corporate limit of the city of Des Moines, then proceeding southerly along the corporate limits of the city of Des Moines until it intersects the north corporate limit of the city of Pleasant Hill, then proceeding first east, then in a clockwise manner along the corporate limits of the city of Pleasant Hill until it intersects the west boundary of Clay township, then proceeding south along the boundary of Clay township until it intersects the north corporate limit of the city of Pleasant Hill, then proceeding first northeast, then in a clockwise manner along the corporate limits of the city of Pleasant Hill until it intersects Northeast Twelfth avenue, then proceeding east along Northeast Twelfth avenue until it intersects the north corporate limit of the city of Pleasant Hill, then proceeding first east, then in a clockwise manner along the corporate limits of the city of Pleasant Hill until it intersects the east corporate limit of the city of Des Moines, then proceeding first south, and then in a clockwise manner along the corporate limits of the city of Des Moines until it intersects U.S. highway 69, then proceeding northwesterly along U.S. highway 69 until it intersects Southeast Fourteenth street, then proceeding northerly along Southeast Fourteenth street until it intersects the Des Moines river, then proceeding northwesterly along the Des Moines river until it intersects Court avenue, then proceeding easterly along Court avenue until it intersects East Court avenue, then proceeding easterly along East Court avenue until it intersects the Union Pacific Railroad tracks, then proceeding southeast along the Union Pacific Railroad tracks until it intersects the Iowa Interstate Railroad tracks, then proceeding east along the Iowa Interstate Railroad tracks until it intersects Southeast Fourteenth street, then proceeding south along Southeast Fourteenth street until it intersects the Union Pacific Railroad tracks, then proceeding east along the Union Pacific Railroad tracks until it intersects the Iowa Interstate Railroad tracks, then proceeding northeast along the Iowa Interstate Railroad tracks until it intersects Southeast Eighteenth street, then proceeding north along Southeast Eighteenth street until it intersects East Eighteenth street, then proceeding north along East Eighteenth street until it intersects Dean avenue, then proceeding west along Dean avenue until it intersects East Seventeenth street, then proceeding northerly along East Seventeenth street until it intersects Lyon street, then proceeding westerly along Lyon street until it in-

tersects East Fifteenth street, then proceeding northerly along East Fifteenth street until it intersects Interstate 235, then proceeding northeasterly along the eastbound lanes of Interstate 235 until it intersects East University avenue, then proceeding east along East University avenue until it intersects East Thirty-fourth street, then proceeding north along East Thirty-fourth street until it intersects Dubuque avenue, then proceeding west along Dubuque avenue until it intersects East Thirty-third street, then proceeding north along East Thirty-third street until it intersects Easton boulevard, then proceeding easterly along Easton boulevard to the point of origin.

68. The sixty-eighth representative district in Polk county shall consist of that portion of the city of Des Moines bounded by a line commencing at the point Easton boulevard intersects the east corporate limit of the city of Des Moines, then proceeding first north, and then in a counterclockwise manner along the corporate limits of the city of Des Moines until it intersects North Union street, then proceeding south along North Union street until it intersects East Euclid avenue, then proceeding east along East Euclid avenue until it intersects East Fourteenth street, then proceeding south along East Fourteenth street until it intersects Arthur avenue, then proceeding west along Arthur avenue until it intersects York street, then proceeding south along York street until it intersects Thompson avenue, then proceeding west along Thompson avenue until it intersects East Ninth street, then proceeding south along East Ninth street until it intersects East Jefferson avenue, then proceeding east along East Jefferson avenue until it intersects East Twelfth street, then proceeding south along East Twelfth street until it intersects Cleveland avenue, then proceeding east along Cleveland avenue until it intersects East Sixteenth street, then proceeding south along East Sixteenth street until it intersects East University avenue, then proceeding east along East University avenue until it intersects East Sixteenth street, then proceeding southeast along East Sixteenth street until it intersects Maple street, then proceeding westerly along Maple street until it intersects East Fifteenth street, then proceeding southeast along East Fifteenth street until it intersects Interstate 235, then proceeding northeasterly along the eastbound lanes of Interstate 235 until it intersects East University avenue, then proceeding east along East University avenue until it intersects East Thirty-fourth street, then proceeding north along East Thirty-fourth street until it intersects Dubuque avenue, then proceeding west along Dubuque avenue until it intersects East Thirty-third street, then proceeding north along East Thirty-third street until it intersects Easton boulevard, then proceeding easterly along Easton boulevard to the point of origin.

69. The sixty-ninth representative district in

Polk county shall consist of:

a. Elkhart, Lincoln, and Washington townships, that portion of Franklin township lying outside the corporate limits of the city of Bondurant, and that portion of Douglas township lying outside the corporate limits of the city of Bondurant and not contained in the seventieth representative district.

b. That portion of Polk county bounded by a line commencing at the point the north corporate limit of the city of Urbandale intersects the west boundary of Polk county, then proceeding first north, and then east, along the boundary of Polk county until it intersects the west boundary of Lincoln township, then proceeding first south, and then east, along the boundary of Lincoln township until it intersects the west boundary of Douglas township, then proceeding south along the west boundary of Douglas township until it intersects the corporate limits of the city of Ankeny at Northeast One Hundred Tenth avenue, then proceeding first west, and then in a counterclockwise manner along the corporate limits of the city of Ankeny until it intersects the north boundary of Saylor township at Northeast Seventieth avenue, then proceeding west along the north boundary of Saylor township until it intersects Northwest Second street, then proceeding south along Northwest Second street until it intersects Interstate 35/80, then proceeding east along Interstate 35/80 until it intersects the west boundary of Delaware township, then proceeding south along the boundary of Delaware township until it intersects the north corporate limit of the city of Des Moines, then proceeding westerly along the corporate limits of the city of Des Moines until it intersects the middle channel of the Des Moines river, then proceeding northwesterly along the middle channel of the Des Moines river until it intersects the corporate limits of the city of Johnston, then proceeding westerly along the corporate limits of the city of Johnston until it intersects the corporate limits of the city of Urbandale, then proceeding first north, and then in a counterclockwise manner along the corporate limits of the city of Urbandale to the point of origin.

70. The seventieth representative district in Polk county shall consist of those portions of Crocker, Douglas, and Saylor townships, and the city of Ankeny, bounded by a line commencing at the point the corporate limits of the city of Ankeny intersect the boundary of Douglas township at Northeast One Hundred Tenth avenue, then proceeding first west, and then in a counterclockwise manner along the corporate limits of the city of Ankeny until it intersects the north boundary of Saylor township at Northeast Seventieth avenue, then proceeding west along the north boundary of Saylor township until it intersects Northwest Second street, then proceeding south along Northwest Second street until it intersects Interstate 35/80, then proceeding east along Interstate 35/80 until it intersects the west boundary of Delaware

township, then proceeding north, and then east, along the boundary of Delaware township until it intersects the corporate limits of the city of Ankeny, then proceeding first south, and then in a counterclockwise manner along the corporate limits of the city of Ankeny until it intersects the west boundary of Douglas township, then proceeding north along the boundary of Douglas township until it intersects the corporate limits of the city of Ankeny, then proceeding first north, and then in a counterclockwise manner along the corporate limits of the city of Ankeny until it intersects the west boundary of Douglas township, then proceeding north along the boundary of Douglas township until it intersects the corporate limits of the city of Ankeny, then proceeding first east, and then in a counterclockwise manner along the corporate limits of the city of Ankeny to the point of origin.

71. The seventy-first representative district shall consist of:

- a. In Jasper county, Fairview township.
- b. In Marion county, Franklin, Pleasant Grove, Red Rock, Summit, Union, Knoxville, and Lake Prairie townships.

72. The seventy-second representative district shall consist of:

- a. Lucas county.
- b. Monroe county.
- c. In Marion county, Dallas, Indiana, Liberty, Washington, and Clay townships.
- d. In Mahaska county:

(1) Black Oak, East Des Moines, Garfield, Harrison, Jefferson, Madison, Prairie, Richland, Scott, and West Des Moines townships.

(2) That portion of Lincoln township bounded by a line commencing at the point the west corporate limit of the city of Oskaloosa intersects the boundary of Garfield township and Lincoln township, then proceeding first north, and then in a clockwise manner along the boundary of Lincoln township until it intersects the north corporate limit of the city of Oskaloosa, then proceeding first west, and then in a counterclockwise manner along the corporate limits of the city of Oskaloosa to the point of origin.

73. The seventy-third representative district shall consist of:

- a. Madison county.
- b. In Dallas county:
 - (1) The city of De Soto.
 - (2) Adams and Union townships.
- c. In Warren county, Belmont, Jackson, Jefferson, Liberty, Otter, Palmyra, Richland, Squaw, Union, Virginia, White Breast, and White Oak townships, and that portion of Linn township lying outside the corporate limits of the city of Norwalk.

74. The seventy-fourth representative district in Warren county shall consist of:

- a. The cities of Indianola and Norwalk.
- b. Allen, Greenfield, and Lincoln townships.

75. The seventy-fifth representative district shall consist of:

a. In Mahaska county:

- (1) The city of Oskaloosa.
- (2) Adams, Cedar, Monroe, Pleasant Grove, Spring Creek, Union, and White Oak townships, and that portion of Lincoln township not contained in the seventy-second representative district.

b. In Poweshiek county:

- (1) The city of Grinnell.
- (2) Chester, Pleasant, Scott, Sugar Creek, Union, Washington, Grant, and Jackson townships.

76. The seventy-sixth representative district shall consist of:

a. Keokuk county.

b. In Iowa county, Dayton, Fillmore, Greene, Hilton, Iowa, Lenox, Lincoln, Pilot, Sumner, Troy, York, English, and Hartford townships.

c. In Poweshiek county, Bear Creek, Deep River, Jefferson, Lincoln, Madison, Malcom, Sheridan, and Warren townships.

d. In Tama county, Columbia, Richland, and Salt Creek townships.

77. The seventy-seventh representative district in Johnson county shall consist of:

a. The city of University Heights.

b. That portion of the city of Iowa City bounded by a line commencing at the point the corporate limits of the city of Iowa City intersect state highway 1, then proceeding northeast along state highway 1 until it intersects Mormon Trek boulevard, then proceeding northwesterly, then northerly, along Mormon Trek boulevard until it intersects the corporate limits of the city of Iowa City, then proceeding first northeast, and then in a clockwise manner along the corporate limits of the city of Iowa City until it intersects County Road W66, then proceeding southeast along County Road W66 until it intersects North Dubuque street, then proceeding southerly along North Dubuque street until it intersects Kimball road, then proceeding southeast along Kimball road until it intersects North Gilbert street, then proceeding southerly along North Gilbert street until it intersects Brown street, then proceeding east along Brown street until it intersects Pleasant street, then proceeding south along Pleasant street until it intersects North Governor street, then proceeding south along North Governor street until it intersects South Governor street, then proceeding south along South Governor street until it intersects Bowery street, then proceeding west along Bowery street until it intersects South Lucas street, then proceeding south along South Lucas street and its extension until it intersects the Iowa Interstate Railroad tracks, then proceeding east along the Iowa Interstate Railroad tracks until it intersects South Riverside drive, then proceeding south along South Riverside drive until it intersects West Benton street, then proceeding west along West Benton street until it intersects Miller avenue, then proceeding south along Miller avenue until it intersects Highway 1 west, then pro-

ceeding east along Highway 1 west until it intersects U.S. highway 6, then proceeding east along U.S. highway 6 until it intersects the Iowa river, then proceeding southerly along the Iowa river until it intersects the corporate limits of the city of Iowa City, then proceeding first southwest, and then in a clockwise manner along the corporate limits of the city of Iowa City to the point of origin.

78. The seventy-eighth representative district in Johnson county shall consist of:

a. East Lucas township.

b. That portion of the city of Iowa City bounded by a line commencing at the point the corporate limits of the city of Iowa City intersect County Road W66, then proceeding southeast along County Road W66 until it intersects North Dubuque street, then proceeding southerly along North Dubuque street until it intersects Kimball road, then proceeding southeast along Kimball road until it intersects North Gilbert street, then proceeding southerly along North Gilbert street until it intersects Brown street, then proceeding east along Brown street until it intersects Pleasant street, then proceeding south along Pleasant street until it intersects North Governor street, then proceeding south along North Governor street until it intersects South Governor street, then proceeding south along South Governor street until it intersects Bowery street, then proceeding west along Bowery street until it intersects South Lucas street, then proceeding south along South Lucas street and its extension until it intersects the Iowa Interstate Railroad tracks, then proceeding east along the Iowa Interstate Railroad tracks until it intersects South Riverside drive, then proceeding south along South Riverside drive until it intersects West Benton street, then proceeding west along West Benton street until it intersects Miller avenue, then proceeding south along Miller avenue until it intersects Highway 1 west, then proceeding east along Highway 1 west until it intersects U.S. highway 6, then proceeding east along U.S. highway 6 until it intersects the Iowa river, then proceeding southerly along the Iowa river until it intersects the corporate limits of the city of Iowa City, then proceeding first east, and then in a counterclockwise manner along the corporate limits of the city of Iowa City to the point of origin.

79. The seventy-ninth representative district shall consist of:

a. Cedar county.

b. In Johnson county, Lincoln and Scott townships.

c. In Muscatine county, Goshen, Moscow, Wapinsonoc, and Wilton townships.

80. The eightieth representative district in Muscatine county shall consist of:

a. The city of Muscatine.

b. Bloomington, Fulton, Lake, Sweetland, and Montpelier townships.

81. The eighty-first representative district in

Scott county shall consist of:

a. That portion of the city of Bettendorf bounded by a line commencing at the point the corporate limits of the city of Bettendorf intersect Spruce Hills drive, then proceeding easterly along Spruce Hills drive until it intersects Eighteenth street, then proceeding southwest along Eighteenth street until it intersects Middle road, then proceeding southwesterly along Middle road until it intersects the corporate limits of the city of Bettendorf, then proceeding first north, and then in a clockwise manner along the corporate limits of the city of Bettendorf to the point of origin.

b. That portion of the city of Davenport bounded by a line commencing at the point the boundary of the state of Iowa and the corporate limits of the city of Davenport intersect the extension of Carey street to the Mississippi river, then proceeding northwest along Carey street and its extension until it intersects East River drive, then proceeding easterly along East River drive until it intersects Carey avenue, then proceeding north along Carey avenue until it intersects East Sixth street, then proceeding westerly along East Sixth street until it intersects Grand avenue, then proceeding north along Grand avenue until it intersects East Seventh street, then proceeding west along East Seventh street until it intersects Farnam street, then proceeding north along Farnam street until it intersects East Eighth street, then proceeding west along East Eighth street until it intersects Iowa street, then proceeding south along Iowa street until it intersects East Seventh street, then proceeding west along East Seventh street until it intersects North Perry street, then proceeding north along North Perry street until it intersects East Twelfth street, then proceeding east along East Twelfth street until it intersects Iowa street, then proceeding north on Iowa street until it intersects East Locust street, then proceeding east along East Locust street until it intersects Carey avenue, then proceeding north along Carey avenue until it intersects East Rusholme street, then proceeding west along East Rusholme street until it intersects Tremont avenue, then proceeding north along Tremont avenue until it intersects East Central Park avenue, then proceeding west along East Central Park avenue until it intersects Farnam street, then proceeding north along Farnam street until it intersects East Central Park avenue, then proceeding west along East Central Park avenue until it intersects West Central Park avenue, then proceeding west along West Central Park avenue until it intersects North Main street, then proceeding north along North Main street until it intersects West Columbia avenue, then proceeding east along West Columbia avenue until it intersects Sheridan street, then proceeding north on Sheridan street until it intersects West Thirtieth street, then proceeding east along West Thirtieth street until it intersects East Thirtieth street, then proceeding east along

East Thirtieth street until it intersects Dubuque street, then proceeding north along Dubuque street until it intersects East Thirtieth street, then proceeding east along East Thirtieth street until it intersects Brady street, then proceeding northerly along Brady street until it intersects North Brady street, then proceeding northerly along North Brady street until it intersects East Thirty-seventh street, then proceeding west along East Thirty-seventh street until it intersects Fair avenue, then proceeding north along Fair avenue until it intersects East Kimberly road, then proceeding east along East Kimberly road until it intersects North Brady street, then proceeding north along North Brady street until it intersects East Fifty-third street, then proceeding west along East Fifty-third street until it intersects Welcome way, then proceeding north along Welcome way until it intersects East Sixty-first street, then proceeding west along East Sixty-first street until it intersects West Sixty-first street, then proceeding west along West Sixty-first street until it intersects North Ripley street, then proceeding north along North Ripley street until it intersects West Sixty-fifth street, then proceeding east along West Sixty-fifth street until it intersects East Sixty-fifth street, then proceeding east along East Sixty-fifth street until it intersects North Brady street, then proceeding north along North Brady street until it intersects U.S. highway 61, then proceeding north along U.S. highway 61 until it intersects the corporate limits of the city of Davenport, then proceeding first southeast, and then in a clockwise manner along the corporate limits of the city of Davenport to the point of origin.

82. The eighty-second representative district in Scott county shall consist of:

a. The cities of Panorama Park and Riverdale.

b. That portion of the city of Bettendorf bounded by a line commencing at the point the east corporate limit of the city of Bettendorf intersects the boundary of the state of Iowa, then proceeding first north, and then in a counterclockwise manner along the corporate limits of the city of Bettendorf until it intersects Spruce Hills drive, then proceeding easterly along Spruce Hills drive until it intersects Eighteenth street, then proceeding southwest along Eighteenth street until it intersects Middle road, then proceeding southwesterly along Middle road until it intersects the corporate limits of the city of Bettendorf, then proceeding first south, and then in a counterclockwise manner along the corporate limits of the city of Bettendorf to the point of origin.

83. The eighty-third representative district shall consist of:

a. In Clinton county:

- (1) The city of Camanche.
- (2) Eden, Grant, Liberty, Olive, Orange, Sharon, Spring Rock, Washington, Welton, and De Witt townships.
- (3) That portion of Camanche township com-

mencing at the point Scott county, Clinton county, and the boundary of the state of Iowa intersect, then proceeding northerly along the boundary of Camanche township until it intersects the corporate limits of the city of Camanche, then proceeding westerly along the corporate limits of the city of Camanche until it intersects the corporate limits of the city of Clinton, then proceeding westerly, then southerly, then easterly, along the boundary of Camanche township to the point of origin.

b. In Scott county, Butler, Princeton, and Le Claire townships, that portion of Winfield township lying outside the corporate limits of the city of Long Grove, that portion of Allens Grove township lying outside the corporate limits of the city of Dixon, and that portion of Pleasant Valley township not contained in the eighty-first or eighty-second representative district.

84. The eighty-fourth representative district in Scott county shall consist of:

a. That portion of the city of Davenport bounded by a line commencing at the point the north corporate limit of the city of Davenport intersects North Division street, then proceeding south along North Division street until it intersects Ridgeview drive, then proceeding southwesterly along Ridgeview drive until it intersects Northwest boulevard, then proceeding northwest along Northwest boulevard until it intersects West Seventy-sixth street, then proceeding westerly along West Seventy-sixth street and its extension until it intersects Silver creek, then proceeding southeasterly along Silver creek until it intersects West Sixtieth street, then proceeding east along West Sixtieth street until it intersects Hilldale road, then proceeding south along Hilldale road until it intersects West Fifty-ninth street, then proceeding east along West Fifty-ninth street until it intersects North Linwood avenue, then proceeding south along North Linwood avenue until it intersects West Fifty-eighth street, then proceeding east along West Fifty-eighth street until it intersects North Pine street, then proceeding south along North Pine street until it intersects West Forty-ninth street, then proceeding west along West Forty-ninth street until it intersects North Fairmount street, then proceeding south along North Fairmount street and its extension until it intersects the Iowa Interstate Railroad tracks, then proceeding southeast along the Iowa Interstate Railroad tracks until it intersects Duck creek, then proceeding westerly along Duck creek until it intersects the extension of North Fairmount street, then proceeding south along North Fairmount street and its extension until it intersects West Central Park avenue, then proceeding east along West Central Park avenue until it intersects North Michigan avenue, then proceeding south along North Michigan avenue until it intersects West Lombard street, then proceeding east along West Lombard street until it intersects North Clark street, then proceeding souther-

ly along North Clark street until it intersects Waverly road, then proceeding southeasterly along Waverly road until it intersects Telegraph road, then proceeding southwest along Telegraph road until it intersects South Clark street, then proceeding south along South Clark street until it intersects Indian road, then proceeding southwest along Indian road until it intersects Diehn avenue, then proceeding south along Diehn avenue until it intersects Blackhawk creek, then proceeding southerly along Blackhawk creek until it intersects South Concord street, then proceeding southeasterly along South Concord street until it intersects the I & M Rail Link tracks, then proceeding northeast along the I & M Rail Link tracks until it intersects West River drive, then proceeding easterly along West River drive until it intersects Blackhawk creek and its extension, then proceeding southeasterly along Blackhawk creek and its extension to the center line of the main channel of Davenport harbor, then proceeding southwest along the main channel of Davenport harbor to the boundary of the state of Iowa and the corporate limits of the city of Davenport, then proceeding first southwesterly, and then in a clockwise manner along the corporate limits of the city of Davenport to the point of origin.

b. Blue Grass, Buffalo, Cleona, Hickory Grove, Liberty, Lincoln, and Sheridan townships.

c. The cities of Dixon and Long Grove.

85. The eighty-fifth representative district in Scott county shall consist of that portion of the city of Davenport bounded by a line commencing at the point the north corporate limit of the city of Davenport intersects North Division street, then proceeding south along North Division street until it intersects Ridgeview drive, then proceeding southwesterly along Ridgeview drive until it intersects Northwest boulevard, then proceeding northwest along Northwest boulevard until it intersects West Seventy-sixth street, then proceeding westerly along West Seventy-sixth street and its extension until it intersects Silver creek, then proceeding southeasterly along Silver creek until it intersects West Sixtieth street, then proceeding east along West Sixtieth street until it intersects Hillandale road, then proceeding south along Hillandale road until it intersects West Fifty-ninth street, then proceeding east along West Fifty-ninth street until it intersects North Linwood avenue, then proceeding south along North Linwood avenue until it intersects West Fifty-eighth street, then proceeding east along West Fifty-eighth street until it intersects North Pine street, then proceeding south along North Pine street until it intersects West Forty-ninth street, then proceeding west along West Forty-ninth street until it intersects North Fairmount street, then proceeding south along North Fairmount street and its extension until it intersects the Iowa Interstate Railroad tracks, then proceeding southeast along the Iowa Interstate Railroad tracks until it intersects

Duck creek, then proceeding westerly along Duck creek until it intersects the extension of North Fairmount street, then proceeding south along North Fairmount street and its extension until it intersects West Central Park avenue, then proceeding east along West Central Park avenue until it intersects North Michigan avenue, then proceeding south along North Michigan avenue until it intersects West Lombard street, then proceeding east along West Lombard street until it intersects North Clark street, then proceeding southerly along North Clark street until it intersects West Thirteenth street, then proceeding east along West Thirteenth street until it intersects North Lincoln avenue, then proceeding south along North Lincoln avenue until it intersects West Eleventh street, then proceeding east along West Eleventh street until it intersects North Pine street, then proceeding south along North Pine street until it intersects Glaspell street, then proceeding northeasterly along Glaspell street until it intersects Belmont avenue, then proceeding southeasterly along Belmont avenue until it intersects Telegraph road, then proceeding northeasterly along Telegraph road until it intersects the Iowa Interstate Railroad tracks, then proceeding northerly along the Iowa Interstate Railroad tracks until it intersects the extension of West Pleasant street, then proceeding east along West Pleasant street and its extension until it intersects Frisco drive, then proceeding northerly along Frisco drive until it intersects Hickory Grove road, then proceeding northwest along Hickory Grove road until it intersects West Lombard street, then proceeding easterly along West Lombard street until it intersects North Marquette street, then proceeding north along North Marquette street until it intersects Duck creek, then proceeding westerly along Duck creek until it intersects North Division street, then proceeding north along North Division street until it intersects West Thirty-seventh street, then proceeding east along West Thirty-seventh street until it intersects North Marquette street, then proceeding north along North Marquette street until it intersects West Kimberly road, then proceeding east along West Kimberly road until it intersects Northwest boulevard, then proceeding south along Northwest boulevard until it intersects North Harrison street, then proceeding south along North Harrison street until it intersects West Thirty-fifth street, then proceeding east along West Thirty-fifth street until it intersects Fair avenue, then proceeding north along Fair avenue until it intersects East Thirty-seventh street, then proceeding east along East Thirty-seventh street until it intersects Fair avenue, then proceeding north along Fair avenue until it intersects East Kimberly road, then proceeding east along East Kimberly road until it intersects North Brady street, then proceeding north along North Brady street until it intersects East Fifty-third

street, then proceeding west along East Fifty-third street until it intersects Welcome way, then proceeding north along Welcome way until it intersects East Sixty-first street, then proceeding west along East Sixty-first street until it intersects West Sixty-first street, then proceeding west along West Sixty-first street until it intersects North Ripley street, then proceeding north along North Ripley street until it intersects West Sixty-fifth street, then proceeding east along West Sixty-fifth street until it intersects East Sixty-fifth street, then proceeding east along East Sixty-fifth street until it intersects North Brady street, then proceeding north along North Brady street until it intersects U.S. highway 61, then proceeding north along U.S. highway 61 until it intersects the corporate limits of the city of Davenport, then proceeding first northwest, and then in a counterclockwise manner along the corporate limits of the city of Davenport to the point of origin.

86. The eighty-sixth representative district in Scott county shall consist of that portion of the city of Davenport bounded by a line commencing at the point the boundary of the state of Iowa intersects the extension of Carey street to the Mississippi river, then proceeding northwest along Carey street and its extension until it intersects East River drive, then proceeding easterly along East River drive until it intersects Carey avenue, then proceeding north along Carey avenue until it intersects East Sixth street, then proceeding westerly along East Sixth street until it intersects Grand avenue, then proceeding north along Grand avenue until it intersects East Seventh street, then proceeding west along East Seventh street until it intersects Farnam street, then proceeding north along Farnam street until it intersects East Eighth street, then proceeding west along East Eighth street until it intersects Iowa street, then proceeding south along Iowa street until it intersects East Seventh street, then proceeding west along East Seventh street until it intersects North Perry street, then proceeding north along North Perry street until it intersects East Twelfth street, then proceeding east along East Twelfth street until it intersects Iowa street, then proceeding north on Iowa street until it intersects East Locust street, then proceeding east along East Locust street until it intersects Carey avenue, then proceeding north along Carey avenue until it intersects East Rusholme street, then proceeding west along East Rusholme street until it intersects Tremont avenue, then proceeding north along Tremont avenue until it intersects East Central Park avenue, then proceeding west along East Central Park avenue until it intersects Farnam street, then proceeding north along Farnam street until it intersects East Central Park avenue, then proceeding west along East Central Park avenue until it intersects West Central Park avenue, then proceeding west along West Central Park avenue until it intersects North Main street,

then proceeding north along North Main street until it intersects West Columbia avenue, then proceeding east along West Columbia avenue until it intersects Sheridan street, then proceeding north on Sheridan street until it intersects West Thirtieth street, then proceeding east along West Thirtieth street until it intersects East Thirtieth street, then proceeding east along East Thirtieth street until it intersects Dubuque street, then proceeding north along Dubuque street until it intersects East Thirtieth street, then proceeding east along East Thirtieth street until it intersects Brady street, then proceeding northerly along Brady street until it intersects North Brady street, then proceeding northerly along North Brady street until it intersects East Thirty-seventh street, then proceeding west along East Thirty-seventh street until it intersects Fair avenue, then proceeding south along Fair avenue until it intersects West Thirty-fifth street, then proceeding west along West Thirty-fifth street until it intersects North Harrison street, then proceeding north along North Harrison street until it intersects Northwest boulevard, then proceeding north along Northwest boulevard until it intersects West Kimberly road, then proceeding west along West Kimberly road until it intersects North Marquette street, then proceeding south along North Marquette street until it intersects West Thirty-seventh street, then proceeding west along West Thirty-seventh street until it intersects North Division street, then proceeding south along North Division street until it intersects Duck creek, then proceeding easterly along Duck creek until it intersects North Marquette street, then proceeding south along North Marquette street until it intersects West Lombard street, then proceeding west along West Lombard street until it intersects Hickory Grove road, then proceeding southeast along Hickory Grove road until it intersects Frisco drive, then proceeding southerly along Frisco drive until it intersects West Pleasant street, then proceeding west along West Pleasant street and its extension until it intersects the Iowa Interstate Railroad tracks, then proceeding southerly along the Iowa Interstate Railroad tracks until it intersects Telegraph road, then proceeding southwesterly along Telegraph road until it intersects Belmont avenue, then proceeding northwesterly along Belmont avenue until it intersects Glaspell street, then proceeding southwesterly along Glaspell street until it intersects North Pine street, then proceeding north along North Pine street until it intersects West Eleventh street, then proceeding west along West Eleventh street until it intersects North Lincoln avenue, then proceeding north along North Lincoln avenue until it intersects West Thirteenth street, then proceeding west along West Thirteenth street until it intersects North Clark street, then proceeding southwesterly along North Clark street until it intersects Waverly road, then proceeding southeasterly

along Waverly road until it intersects Telegraph road, then proceeding southwest along Telegraph road until it intersects South Clark street, then proceeding south along South Clark street until it intersects Indian road, then proceeding southwest along Indian road until it intersects Diehn avenue, then proceeding south along Diehn avenue until it intersects Blackhawk creek, then proceeding southerly along Blackhawk creek until it intersects South Concord street, then proceeding southeasterly along South Concord street until it intersects the I & M Rail Link tracks, then proceeding northeast along the I & M Rail Link tracks until it intersects West River drive, then proceeding easterly along West River drive until it intersects Blackhawk creek and its extension, then proceeding southeasterly along Blackhawk creek and its extension to the center line of the main channel of Davenport harbor, then proceeding southwest along the main channel of Davenport harbor to the boundary of the state of Iowa, then proceeding northeasterly along the boundary of the state of Iowa to the point of origin.

87. The eighty-seventh representative district shall consist of:

a. In Muscatine county, Cedar, Orono, and Pike townships, and those portions of Seventy-Six and Fruitland townships lying outside the corporate limits of the city of Muscatine.

b. Louisa county.

c. In Des Moines county:

(1) Concordia, Danville, Flint River, Franklin, Pleasant Grove, Union, Washington, and Yellow Springs townships.

(2) The cities of Danville, Mediapolis, Middletown, and West Burlington.

88. The eighty-eighth representative district in Des Moines county shall consist of:

a. The city of Burlington.

b. Benton, Huron, Jackson, and Tama townships.

89. The eighty-ninth representative district shall consist of:

a. Washington county.

b. In Johnson county, Fremont, Liberty, Pleasant Valley, Sharon, Union, and Washington townships, and that portion of West Lucas township lying outside the corporate limits of the cities of Corville and University Heights.

c. In Jefferson county, Buchanan, Penn, and Walnut townships.

90. The ninetieth representative district shall consist of:

a. Van Buren county.

b. In Jefferson county:

(1) The city of Fairfield.

(2) Black Hawk, Cedar, Center, Des Moines, Liberty, Lockridge, Locust Grove, Polk, and Round Prairie townships.

c. In Wapello county, Agency, Columbia, Competine, Highland, Keokuk, Pleasant, and Washington townships, and those portions of Dahllone-

ga and Richland townships lying outside the corporate limits of the city of Ottumwa.

91. The ninety-first representative district shall consist of:

a. Henry county.

b. In Lee county:

(1) The city of Donnellson.

(2) Cedar, Denmark, Franklin, Green Bay, Harrison, Marion, Pleasant Ridge, and West Point townships, and that portion of Washington township not contained in the ninety-second representative district.

92. The ninety-second representative district in Lee county shall consist of:

a. Des Moines, Jefferson, Madison, Montrose, Van Buren, and Jackson townships, and that portion of Charleston township lying outside the corporate limits of the city of Donnellson.

b. Those portions of the city of Fort Madison and Washington township bounded by a line commencing at the point the boundary of the state of Iowa intersects the north corporate limit of the city of Fort Madison, then proceeding first southwest, and then in a clockwise manner along the corporate limits of the city of Fort Madison to the point of origin.

93. The ninety-third representative district in Wapello county shall consist of:

a. The city of Ottumwa.

b. Adams, Cass, Center, Green, and Polk townships.

94. The ninety-fourth representative district shall consist of:

a. Wayne county.

b. Appanoose county.

c. Davis county.

95. The ninety-fifth representative district shall consist of:

a. Clarke county.

b. Decatur county.

c. In Union county:

(1) The city of Creston.

(2) Dodge, Douglas, Highland, Jones, Lincoln, New Hope, Pleasant, Spaulding, and Union townships.

96. The ninety-sixth representative district shall consist of:

a. Montgomery county.

b. Adams county.

c. Taylor county.

d. Ringgold county.

e. In Union county, Grant, Platte, and Sand Creek townships.

97. The ninety-seventh representative district shall consist of:

a. Fremont county.

b. Page county.

c. In Mills county:

(1) The city of Malvern.

(2) Anderson, Deer Creek, Rawles, Silver Creek, White Cloud, and Indian Creek townships, and that portion of Center township lying outside

the corporate limits of the city of Glenwood.

98. The ninety-eighth representative district shall consist of:

a. In Mills county:

(1) The city of Glenwood.

(2) Glenwood, Ingraham, Lyons, Plattville, Saint Marys, and Oak townships.

b. In Pottawattamie county:

(1) The city of Oakland.

(2) Belknap, Carson, Garner, Grove, Hardin, James, Keg Creek, Macedonia, Silver Creek, Washington, and York townships, that portion of Minden township lying outside the corporate limits of the city of Neola, that portion of Pleasant township lying outside the corporate limits of the city of Shelby, and those portions of Garner, Lake, and Lewis townships lying outside the corporate limits of the city of Council Bluffs.

(3) That portion of the city of Council Bluffs bounded by a line commencing at the point McPherson avenue intersects the east corporate limit of the city of Council Bluffs, then proceeding first east, and then in a clockwise manner along the corporate limits of the city of Council Bluffs until it intersects Valley View drive, then proceeding northerly along Valley View drive until it intersects Madison avenue, then proceeding westerly along Madison avenue until it intersects Bennett avenue, then proceeding northeasterly along Bennett avenue until it intersects Franklin avenue, then proceeding northwesterly along Franklin avenue until it intersects Lincoln avenue, then proceeding northwesterly along Lincoln avenue until it intersects Park lane, then proceeding east along Park lane until it intersects Morningside avenue, then proceeding south along Morningside avenue until it intersects Gleason avenue, then proceeding easterly along Gleason avenue until it intersects McPherson avenue, then proceeding easterly along McPherson avenue to the point of origin.

99. The ninety-ninth representative district in Pottawattamie county shall consist of that portion of the city of Council Bluffs bounded by a line commencing at the point the corporate limits of the city of Council Bluffs intersect the boundary of the state of Iowa and the south boundary of Lake township, then proceeding first east, and then in a clockwise manner along the corporate limits of the city of Council Bluffs until it intersects McPherson avenue, then proceeding westerly along McPherson avenue until it intersects Gleason avenue, then proceeding westerly along Gleason avenue until it intersects Morningside avenue, then proceeding north along Morningside avenue until it intersects Park lane, then proceeding west along Park lane until it intersects Lincoln avenue, then proceeding southeasterly along Lincoln avenue until it intersects Franklin avenue, then proceeding westerly along Franklin avenue until it intersects Hazel street, then proceeding south along Hazel street until it intersects East Palmer avenue, then proceeding west along East

Palmer avenue until it intersects West Palmer avenue, then proceeding west along West Palmer avenue until it intersects Madison avenue, then proceeding northwesterly along Madison avenue until it intersects Graham avenue east, then proceeding southerly along Graham avenue east until it intersects Graham avenue west, then proceeding southwesterly along Graham avenue west until it intersects Tostevin street, then proceeding south along Tostevin street until it intersects Highway 375, then proceeding northwest along Highway 375 until it intersects Sixteenth avenue, then proceeding west along Sixteenth avenue until it intersects South Seventh street, then proceeding south along South Seventh street until it intersects Twentieth avenue, then proceeding west along Twentieth avenue until it intersects South Eleventh street, then proceeding south along South Eleventh street until it intersects Twenty-first avenue, then proceeding west along Twenty-first avenue until it intersects South Thirteenth street, then proceeding south along South Thirteenth street until it intersects Twenty-third avenue, then proceeding west along Twenty-third avenue until it intersects Indian creek, then proceeding north along Indian creek until it intersects Sixteenth avenue, then proceeding west along Sixteenth avenue until it intersects South Seventeenth street, then proceeding north along South Seventeenth street until it intersects Ninth avenue, then proceeding west along Ninth avenue until it intersects South Twenty-first street, then proceeding north along South Twenty-first street until it intersects Third avenue, then proceeding west along Third avenue until it intersects South Twenty-third street, then proceeding north along South Twenty-third street until it intersects West Broadway, then proceeding west along West Broadway until it intersects North Twenty-fifth street, then proceeding north along North Twenty-fifth street until it intersects Avenue I, then proceeding west along Avenue I until it intersects North Twenty-sixth street, then proceeding north along North Twenty-sixth street until it intersects Avenue N, then proceeding east along Avenue N until it intersects North Twenty-fifth street, then proceeding north along North Twenty-fifth street until it intersects the Chicago Central and Pacific Railroad tracks, then proceeding northwesterly along the Chicago Central and Pacific Railroad tracks until it intersects the boundary of the state of Iowa, then proceeding northeasterly along the boundary of the state of Iowa to the point of origin.

100. The one hundredth representative district in Pottawattamie county shall consist of:

a. That portion of the city of Council Bluffs bounded by a line commencing at the point the Chicago Central and Pacific Railroad track intersects the boundary of the state of Iowa, then proceeding first southwesterly, and then in a counter-clockwise manner along the corporate limits of the city of Council Bluffs until it intersects Fawn Park

drive and Valley View drive, then proceeding northerly along Valley View drive until it intersects Madison avenue, then proceeding westerly along Madison avenue until it intersects Bennett avenue, then proceeding northeasterly along Bennett avenue until it intersects Franklin avenue, then proceeding northwesterly along Franklin avenue until it intersects Hazel street, then proceeding south along Hazel street until it intersects East Palmer avenue, then proceeding west along East Palmer avenue until it intersects West Palmer avenue, then proceeding west along West Palmer avenue until it intersects Madison avenue, then proceeding northwesterly along Madison avenue until it intersects Graham avenue east, then proceeding southerly along Graham avenue east until it intersects Graham avenue west, then proceeding southwest along Graham avenue west until it intersects Tostevin street, then proceeding south along Tostevin street until it intersects Highway 375, then proceeding northwest along Highway 375 until it intersects Sixteenth avenue, then proceeding west along Sixteenth avenue until it intersects South Seventh street, then proceeding south along South Seventh street until it intersects Twentieth avenue, then proceeding west along Twentieth avenue until it intersects South Eleventh street, then proceeding south along South Eleventh street until it intersects Twenty-first avenue, then proceeding west along Twenty-first avenue until it intersects South Thirteenth street, then proceeding south along South Thirteenth street until it intersects Twenty-third avenue, then proceeding west along Twenty-third avenue until it intersects Indian creek, then proceeding north along Indian creek until it intersects Sixteenth avenue, then proceeding west along Sixteenth avenue until it intersects South Seventeenth street, then proceeding north along South Seventeenth street until it intersects Ninth avenue, then proceeding west along Ninth avenue until it intersects South Twenty-first street, then proceeding north along South Twenty-first street until it intersects Third avenue, then proceeding west along Third avenue until it intersects South Twenty-third street, then proceeding north along South Twenty-third street until it intersects West Broadway, then proceeding west along West Broadway until it intersects North Twenty-fifth street, then proceeding north along North Twenty-fifth street until it intersects Avenue I, then proceeding west along Avenue I until it intersects North Twenty-sixth street, then proceeding north along North Twenty-sixth street until it intersects Avenue N, then proceeding east along Avenue N until it intersects North Twenty-fifth street, then proceeding north along North Twenty-fifth street until it intersects the Chicago Central and Pacific Railroad tracks, then proceeding northwesterly along the Chicago Central and Pacific Railroad tracks to the point of origin.

b. The city of Carter Lake.

2001 Acts, 1st Ex, ch 1, §2, 6

References based on January 1, 2000, boundaries and official census maps and Redistricting Census 2000 TIGER/Line files; 2001 Acts, 1st Ex, ch 1, §5

Membership beginning in 2003; see 2001 Acts, 1st Ex, ch 1, §3
Section stricken and rewritten

41.2 Senate districts.

The state of Iowa is hereby divided into fifty senatorial districts, each composed of two of the representative districts established by section 41.1, as follows:

1. The first senatorial district shall consist of the first and second representative districts.

2. The second senatorial district shall consist of the third and fourth representative districts.

3. The third senatorial district shall consist of the fifth and sixth representative districts.

4. The fourth senatorial district shall consist of the seventh and eighth representative districts.

5. The fifth senatorial district shall consist of the ninth and tenth representative districts.

6. The sixth senatorial district shall consist of the eleventh and twelfth representative districts.

7. The seventh senatorial district shall consist of the thirteenth and fourteenth representative districts.

8. The eighth senatorial district shall consist of the fifteenth and sixteenth representative districts.

9. The ninth senatorial district shall consist of the seventeenth and eighteenth representative districts.

10. The tenth senatorial district shall consist of the nineteenth and twentieth representative districts.

11. The eleventh senatorial district shall consist of the twenty-first and twenty-second representative districts.

12. The twelfth senatorial district shall consist of the twenty-third and twenty-fourth representative districts.

13. The thirteenth senatorial district shall consist of the twenty-fifth and twenty-sixth representative districts.

14. The fourteenth senatorial district shall consist of the twenty-seventh and twenty-eighth representative districts.

15. The fifteenth senatorial district shall consist of the twenty-ninth and thirtieth representative districts.

16. The sixteenth senatorial district shall consist of the thirty-first and thirty-second representative districts.

17. The seventeenth senatorial district shall consist of the thirty-third and thirty-fourth representative districts.

18. The eighteenth senatorial district shall consist of the thirty-fifth and thirty-sixth representative districts.

19. The nineteenth senatorial district shall consist of the thirty-seventh and thirty-eighth representative districts.

20. The twentieth senatorial district shall consist of the thirty-ninth and fortieth representative districts.

21. The twenty-first senatorial district shall consist of the forty-first and forty-second representative districts.

22. The twenty-second senatorial district shall consist of the forty-third and forty-fourth representative districts.

23. The twenty-third senatorial district shall consist of the forty-fifth and forty-sixth representative districts.

24. The twenty-fourth senatorial district shall consist of the forty-seventh and forty-eighth representative districts.

25. The twenty-fifth senatorial district shall consist of the forty-ninth and fiftieth representative districts.

26. The twenty-sixth senatorial district shall consist of the fifty-first and fifty-second representative districts.

27. The twenty-seventh senatorial district shall consist of the fifty-third and fifty-fourth representative districts.

28. The twenty-eighth senatorial district shall consist of the fifty-fifth and fifty-sixth representative districts.

29. The twenty-ninth senatorial district shall consist of the fifty-seventh and fifty-eighth representative districts.

30. The thirtieth senatorial district shall consist of the fifty-ninth and sixtieth representative districts.

31. The thirty-first senatorial district shall consist of the sixty-first and sixty-second representative districts.

32. The thirty-second senatorial district shall consist of the sixty-third and sixty-fourth representative districts.

33. The thirty-third senatorial district shall consist of the sixty-fifth and sixty-sixth representative districts.

34. The thirty-fourth senatorial district shall consist of the sixty-seventh and sixty-eighth representative districts.

35. The thirty-fifth senatorial district shall consist of the sixty-ninth and seventieth representative districts.

36. The thirty-sixth senatorial district shall consist of the seventy-first and seventy-second representative districts.

37. The thirty-seventh senatorial district shall consist of the seventy-third and seventy-fourth representative districts.

38. The thirty-eighth senatorial district shall consist of the seventy-fifth and seventy-sixth representative districts.

39. The thirty-ninth senatorial district shall consist of the seventy-seventh and seventy-eighth representative districts.

40. The fortieth senatorial district shall consist of the seventy-ninth and eightieth representative districts.

41. The forty-first senatorial district shall consist of the eighty-first and eighty-second representative districts.

42. The forty-second senatorial district shall consist of the eighty-third and eighty-fourth representative districts.

43. The forty-third senatorial district shall consist of the eighty-fifth and eighty-sixth representative districts.

44. The forty-fourth senatorial district shall consist of the eighty-seventh and eighty-eighth representative districts.

45. The forty-fifth senatorial district shall consist of the eighty-ninth and ninetieth representative districts.

46. The forty-sixth senatorial district shall consist of the ninety-first and ninety-second representative districts.

47. The forty-seventh senatorial district shall consist of the ninety-third and ninety-fourth representative districts.

48. The forty-eighth senatorial district shall consist of the ninety-fifth and ninety-sixth representative districts.

49. The forty-ninth senatorial district shall consist of the ninety-seventh and ninety-eighth representative districts.

50. The fiftieth senatorial district shall consist of the ninety-ninth and one hundredth representative districts.

Membership beginning in 2003 and effect on incumbent senators; see 2001 Acts, 1st Ex, ch 1, §3

Section not amended; footnote revised

CHAPTER 43

PARTISAN NOMINATIONS — PRIMARY ELECTION

43.67 Nominee's right to place on ballot.

Each candidate nominated pursuant to section 43.52 or 43.65 is entitled to have the candidate's name printed on the official ballot to be voted at the general election without other certificate unless the candidate was nominated by write-in votes. Immediately after the completion of the canvass held under section 43.49, the county auditor shall notify each person who was nominated by

write-in votes for a county or township office that the person is required to file an affidavit of candidacy if the person wishes to be a candidate for that office at the general election. Immediately after the completion of the canvass held under section 43.63, the secretary of state shall notify each person who was nominated by write-in votes for a state or federal office that the person is required to file an affidavit of candidacy if the person

wishes to be a candidate for that office at the general election. If the affidavit is not filed by five p.m. on the seventh day after the completion of the canvass, that person's name shall not be placed upon the official general election ballot. The affidavit shall be signed by the candidate, notarized, and filed with the county auditor or the secretary of state, whichever is applicable.

The affidavit shall be in the form prescribed by the secretary of state. The affidavit shall include the following information:

1. The candidate's name in the form the candidate wants it to appear on the ballot.
2. The candidate's home address.
3. The name of the county in which the candidate resides.
4. The political party by which the candidate was nominated.
5. The office sought by the candidate, and the district the candidate seeks to represent, if any.
6. A declaration that if the candidate is elected the candidate will qualify by taking the oath of office.

7. A statement that the candidate is aware that the candidate is required to organize a candidate's committee which shall file an organization statement and disclosure reports if the committee or the candidate receives contributions, makes expenditures, or incurs indebtedness in excess of the reporting threshold in section 56.2, subsection 5. This subsection shall not apply to candidates for federal office.

8. A statement that the candidate is aware of the prohibition in section 49.41 against being a candidate for more than one office to be filled at the same election, except county agricultural extension council and soil and water conservation district commission.

9. A statement that the candidate is aware that the candidate is disqualified from holding office if the candidate has been convicted of a felony or other infamous crime and the candidate's rights have not been restored by the governor or by the president of the United States.

2001 Acts, ch 158, §7
Subsection 8 amended

CHAPTER 44

NOMINATIONS BY NONPARTY POLITICAL ORGANIZATIONS

44.3 Certificate.

1. The certificate required by section 44.2 shall state the following information:

- a. The name of each candidate nominated.
- b. The office to which each candidate is nominated.
- c. The name of the political organization making such nomination, expressed in not more than five words.
- d. The place of residence of each nominee, with the street or number thereof, if any.
- e. In case of presidential candidates, the names and addresses of presidential electors shall be stated, and the names of the candidates for president and vice president shall be added to the name of the organization.
- f. The name and address of each member of the organization's executive or central committee.
- g. The provisions, if any, made for filling vacancies in nominations.
- h. The name and address of each delegate or voter in attendance at a convention or caucus where a nomination is made.

2. Each candidate nominated by the convention or caucus shall complete and file a signed, notarized affidavit of candidacy. The affidavit shall be in the form prescribed by the secretary of state. The affidavit shall include the following information:

- a. The candidate's name in the form the candidate wants it to appear on the ballot.
- b. The candidate's home address.

c. The name of the county in which the candidate resides.

d. The name of the political organization by which the candidate was nominated.

e. The office sought by the candidate, and the district the candidate seeks to represent, if any.

f. A declaration that if the candidate is elected the candidate will qualify by taking the oath of office.

g. A statement that the candidate is aware that the candidate is required to organize a candidate's committee which shall file an organization statement and disclosure reports if the committee or the candidate receives contributions, makes expenditures, or incurs indebtedness in excess of the reporting threshold in section 56.2, subsection 5. This subsection shall not apply to candidates for federal office.

h. A statement that the candidate is aware of the prohibition in section 49.41 against being a candidate for more than one office to be filled at the same election, except county agricultural extension council and soil and water conservation district commission.

i. A statement that the candidate is aware that the candidate is disqualified from holding office if the candidate has been convicted of a felony or other infamous crime and the candidate's rights have not been restored by the governor or by the president of the United States.

2001 Acts, ch 158, §8
Subsection 2, paragraph h amended

CHAPTER 45

NOMINATIONS BY PETITION

45.3 Preparation of petition and affidavit.

Each eligible elector who signs a nominating petition drawn up in accordance with this chapter shall add to the signature the elector's residence address and the date of signing. The person whose nomination is proposed by the petition shall not sign it. A person may sign nomination petitions under this chapter for more than one candidate for the same office, and the signature is not invalid solely because the person signed nomination petitions for one or more other candidates for the office.

Each candidate shall complete and file a signed, notarized affidavit of candidacy. The affidavit shall be filed at the same time as the nomination petition. The affidavit shall be in the form prescribed by the secretary of state and shall include the following information:

1. The candidate's name in the form the candidate wants it to appear on the ballot.
2. The candidate's home address.
3. The name of the county in which the candidate resides.
4. The name of the political organization by which the candidate was nominated, if any.
5. The office sought by the candidate, and the

district the candidate seeks to represent, if any.

6. A declaration that if the candidate is elected the candidate will qualify by taking the oath of office.

7. A statement that the candidate is aware that the candidate is required to organize a candidate's committee which shall file an organization statement and disclosure reports if the committee or the candidate receives contributions, makes expenditures, or incurs indebtedness in excess of the reporting threshold in section 56.2, subsection 5. This subsection shall not apply to candidates for federal office.

8. A statement that the candidate is aware of the prohibition in section 49.41 against being a candidate for more than one office to be filled at the same election, except county agricultural extension council and soil and water conservation district commission.

9. A statement that the candidate is aware that the candidate is disqualified from holding office if the candidate has been convicted of a felony or other infamous crime and the candidate's rights have not been restored by the governor or by the president of the United States.

2001 Acts, ch 158, §9
Subsection 8 amended

CHAPTER 47

ELECTION COMMISSIONERS

47.7 State registrar of voters.

1. The state commissioner of elections is designated the state registrar of voters, and shall regulate the preparation, preservation, and maintenance of voter registration records, the preparation of precinct election registers for all elections administered by the commissioner of any county, and the preparation of other data on voter registration and participation in elections which is requested and purchased at actual cost of preparation and production by a political party or any resident of this state. The registrar shall maintain a log, which is a public record, showing all lists and reports which have been requested or generated or which are capable of being generated by existing programs of the data processing services of the registrar. In the execution of the duties provided by this chapter, the state registrar of voters shall provide the maximum public access to the electoral process permitted by law.

2. The registrar shall offer to each county in the state the opportunity to arrange for perfor-

mance of all functions referred to in subsection 1 by the data processing facilities of the registrar, commencing at the earliest practicable time, at a cost to the county determined in accordance with the standard charges for those services adopted annually by the registration commission. A county may accept this offer without taking bids under section 47.5.

3. Any county may use its own data processing facilities for voter registration record keeping and utilization functions, if the system design and the form in which the registration records are kept conform to specifications established by rules promulgated by the registration commission. Each county exercising the option to maintain its own voter registration records under this subsection shall provide the registrar, at the county's expense, original and updated voter registration lists in a form and at times prescribed by the registrar.

4. Not later than July 1, 1984, information listed in section 48A.11 contained in a county's

manual records but not on the county's computer readable records shall be provided to the registrar in a form specified by the registrar. The registrar shall require that any information supplied under section 48A.11, except the signature and attestation of the registrant, be provided to the registrar

in a form specified by the registrar.

Legislative intent that state data processing services to support voter registration file maintenance and storage be provided without charge; 98 Acts, ch 1217, §26; 99 Acts, ch 199, §27; 2000 Acts, ch 1231, §31; 2001 Acts, ch 187, §24

Section not amended; footnote revised

CHAPTER 49

METHOD OF CONDUCTING ELECTIONS

49.5 City precincts.

The council of a city where establishment of more than one precinct is necessary or deemed advisable shall, at the time required by law, divide the city into the number of election precincts as will best serve the convenience of the voters while promoting electoral efficiency. As used in this section, the term "*the convenience of the voters*" refers to, but is not necessarily limited to, the use of precinct boundaries which can be readily described to and identified by voters and for which there is ease of access by voters to their respective precinct polling places by reasonably direct routes of travel. As used in this section, the term "*promoting electoral efficiency*" means reducing the cost of staffing election precincts by requiring cities to avoid creating more precincts than is reasonably necessary to provide voters access to voting.

The precinct boundaries shall conform to section 49.3 and shall be described in an ordinance adopted by the council within the time required by section 49.7. Before final adoption of any change in election precinct boundaries pursuant to this section or section 49.6, the council shall permit the commissioner not less than seven and not more than ten days' time to offer written comments to the council on the proposed reprecincting. If the commissioner recommends changes in the proposed reprecincting which the commissioner concludes could better serve the convenience of the voters or could promote electoral efficiency, including lowering election costs, the council shall, if no changes to the reprecincting are made, include reasons in the ordinance for not adopting the proposed changes of the commissioner. A public hearing shall be held before final adoption of the ordinance. Notice of the date, time, and place of the hearing shall be given as provided in chapter 21.

2001 Acts, ch 50, §1, 2
Section amended

49.41 More than one office prohibited.

A person shall not be a candidate for more than one office to be filled at the same election. A person who has been nominated for more than one office shall file a written notice declaring the office for which the person wishes to appear on the ballot.

If the nomination papers for all offices for which

the candidate has been nominated are required to be filed with the same commissioner of elections, the candidate shall file a written notice with that commissioner no later than five p.m. on the final date upon which nomination papers may be filed for the election. The notice shall state the office for which the person wishes to appear on the ballot. If the required notice is not filed, the candidate's name shall not be certified by the state commissioner for any office for which nomination papers are filed with the state commissioner and the county commissioner of elections shall not include the candidate's name on the ballot for any office in any county.

If a person is a candidate for one or more offices for which nomination papers are required to be filed with the state commissioner and one or more offices for which nomination papers are required to be filed with the county commissioner, the candidate shall notify the state commissioner and the county commissioner in writing. The notice shall state the office for which the person chooses to remain a candidate. The notice shall be filed no later than the last day to file nomination papers with the commissioner. If the required notice is not filed, the candidate's name shall not appear on the ballot for any office in any county.

If necessary, the county commissioner shall certify to the state commissioner the name of any person who is a candidate for more than one office which will appear on the ballot for the election. The certification of dual candidacy shall be made no later than five p.m. on the day following the final day to file nomination papers in the office of the commissioner.

When the state commissioner receives notice from the county commissioner that a candidate for a state or federal office has also been nominated for a county or township office, the state commissioner shall amend the certificate issued pursuant to section 43.73 and notify the commissioners of any other counties to whom the candidate's name was originally certified and instruct them to remove the candidate's name from the ballot in those counties.

This section does not apply to the county agricultural extension council or the soil and water conservation district commission.

2001 Acts, ch 158, §10

Unnumbered paragraph 6 amended

CHAPTER 50

CANVASS OF VOTES

50.16 Tally list of board.

The tally list shall be prepared in writing by the election board giving, in legibly printed numerals, the total number of people who cast ballots in the precinct, the total number of ballots cast for each officer, except those rejected, the name of each person voted for, and the number of votes given to each person for each different office. The tally list shall be signed by the precinct election officials, and be substantially as follows:

At an election at in township, or in precinct of city or township, in county, state of Iowa, on the day of A.D. , there were ballots cast for the office of of which
(Candidate's name) had votes.
(Candidate's name) had votes.
(and in the same manner for any other officer).

A true tally list:

(Name) Election Board
(Name) Members.
(Name)

Attest:

(Name) Designated
(Name) Tally Keepers.

2001 Acts, ch 24, §18
Section amended

CHAPTER 53

ABSENT VOTERS

53.37 Definitions.

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.

For the purposes of this division, "*qualified voter*" means a person who is included within the term "*armed forces of the United States*" as described in this section, who would be qualified to register to vote under section 48A.5, subsection 2, except for residency, and who is not disqualified from registering to vote and voting under section 48A.6.

2001 Acts, ch 56, §4
NEW unnumbered paragraph 4

CHAPTER 62

CONTESTING ELECTIONS OF COUNTY OFFICERS

62.17 Voters required to testify.

The court may require any person called as a witness, who voted at such election, to answer touching the person's qualifications as a voter, and, if the person was not a registered voter in the

county where the person voted, then to answer for whom the person voted.

2001 Acts, ch 56, §5
Section amended

CHAPTER 66

REMOVAL FROM OFFICE

66.3 Who may file petition.

The petition for removal may be filed:

1. By the attorney general in all cases.
2. As to state officers, by not fewer than twenty-five electors of the state.
3. As to any other officer, by five registered voters of the district, county, or municipality where the duties of the office are to be performed.

4. As to district officers, by the county attorney of any county in the district.

5. As to all county and municipal officers, by the county attorney of the county where the duties of the office are to be performed.

2001 Acts, ch 56, §6
Subsection 3 amended

CHAPTER 68B

CONFLICTS OF INTEREST OF PUBLIC OFFICERS AND EMPLOYEES

68B.22 Gifts accepted or received.

1. Except as otherwise provided in this section, a public official, public employee, or candidate, or that person's immediate family member shall not, directly or indirectly, accept or receive any gift or series of gifts from a restricted donor. A public official, public employee, candidate, or the person's immediate family member shall not solicit any gift or series of gifts from a restricted donor at any time.

2. Except as otherwise provided in this section, a restricted donor shall not, directly or indirectly, offer or make a gift or a series of gifts to a public official, public employee, or candidate. Except as otherwise provided in this section, a restricted donor shall not, directly or indirectly, join with one or more other restricted donors to offer or make a gift or a series of gifts to a public official, public employee, or candidate.

3. A restricted donor may give, and a public official, public employee, or candidate, or the person's immediate family member, may accept an otherwise prohibited nonmonetary gift or a series of otherwise prohibited nonmonetary gifts and not be in violation of this section if the nonmonetary gift or series of nonmonetary gifts is donated within thirty days to a public body, the department of general services, or a bona fide educational or charitable organization, if no part of the net earn-

ings of the educational or charitable organization inures to the benefit of any private stockholder or other individual. All such items donated to the department of general services shall be disposed of by assignment to state agencies for official use or by public sale.

4. Notwithstanding subsections 1 and 2, the following gifts may be received by public officials, public employees, candidates, or members of the immediate family of public officials, public employees, or candidates:

a. Contributions to a candidate or a candidate's committee.

b. Informational material relevant to a public official's or public employee's official functions, such as books, pamphlets, reports, documents, periodicals, or other information that is recorded in a written, audio, or visual format.

c. Anything received from anyone related within the fourth degree by kinship or marriage, unless the donor is acting as an agent or intermediary for another person not so related.

d. An inheritance.

e. Anything available or distributed free of charge to members of the general public without regard to the official status of the recipient.

f. Items received from a bona fide charitable, professional, educational, or business organization to which the donee belongs as a dues-paying

member, if the items are given to all members of the organization without regard to individual members' status or positions held outside of the organization and if the dues paid are not inconsequential when compared to the items received.

g. Actual expenses of a donee for food, beverages, registration, travel, and lodging for a meeting, which is given in return for participation in a panel or speaking engagement at the meeting when the expenses relate directly to the day or days on which the donee has participation or presentation responsibilities.

h. Plaques or items of negligible resale value which are given as recognition for the public services of the recipient.

i. Nonmonetary items with a value of three dollars or less that are received from any one donor during one calendar day.

j. Items or services solicited by or given to a state, national, or regional government organization in which the state of Iowa or a political subdivision of the state is a member for purposes of a business or educational conference, seminar, or other meeting; or solicited by or given to state, national, or regional government organizations, whose memberships and officers are primarily composed of state or local government officials or employees, for purposes of a business or educational conference, seminar, or other meeting.

k. Items or services received by members or representatives of members at a regularly scheduled event that is part of a business or educational conference, seminar, or other meeting that is sponsored and directed by any state, national, or regional government organization in which the state of Iowa or a political subdivision of the state is a member, or received at such an event by members or representatives of members of state, national, or regional government organizations whose memberships and officers are primarily composed of state or local government officials or employees.

l. Funeral flowers or memorials to a church or nonprofit organization.

m. Gifts which are given to a public official or public employee for the public official's or public employee's wedding or twenty-fifth or fiftieth wedding anniversary.

n. Payment of salary or expenses by a person's employer or the firm in which the person is a member for the cost of attending a meeting of a subunit of an agency when the person whose expenses are being paid serves on a board, commission, committee, council, or other subunit of the agency and the person is not entitled to receive compensation or reimbursement of expenses from the state or a political subdivision of the state for attending the meeting.

o. Gifts of food, beverages, travel, or lodging received by a public official or public employee if all of the following apply:

(1) The public official or public employee is officially representing an agency in a delegation

whose sole purpose is to attract a specific new business to locate in the state, encourage expansion or retention of an existing business already established in the state, or to develop markets for Iowa businesses or products.

(2) The donor of the gift is not the business or businesses being contacted. However, food or beverages provided by the business or businesses being contacted which are consumed during the meeting are not a gift under section 68B.2, subsection 9, or this section.

(3) The public official or public employee plays a significant role in the presentation to the business or businesses on behalf of the public official's or public employee's agency.

p. Gifts other than food, beverages, travel, and lodging received by a public official or public employee which are received from a person who is a citizen of a country other than the United States and are given during a ceremonial presentation or as a result of a custom of the other country and are of personal value only to the donee.

q. Actual registration costs for informational meetings or sessions which assist a public official or public employee in the performance of the person's official functions. The costs of food, drink, lodging and travel are not "registration costs" under this paragraph. Meetings or sessions which a public official or public employee attends for personal or professional licensing purposes are not "informational meetings or sessions which assist a public official or public employee in the performance of the person's official functions" under this paragraph.

5. For purposes of determining the value of an item given or received, an individual who gives an item on behalf of more than one person shall not divide the value of the item by the number of persons on whose behalf the item is given and the value of an item received shall be the value actually received by the donee.

6. A gift shall not be considered to be received by a public official or public employee if the state is the donee of the gift and the public official or public employee is required to receive the gift on behalf of the state as part of the performance of the person's duties of office or employment.

7. A person shall not request, and a member of the general assembly shall not agree, that a member of the general assembly sell tickets for a community-related social event that is to be held for members of the general assembly in Polk county during the legislative session. This section shall not apply to Polk county or city of Des Moines events that are open to the public generally or are held only for Polk county or city of Des Moines legislators.

8. Except as otherwise provided in subsection 4, an organization or association which has as one of its purposes the encouragement of the passage, defeat, introduction, or modification of legislation shall not give and a member of the general assem-

bly shall not receive food, beverages, registration, or scheduled entertainment with a per person value in excess of three dollars.

2001 Acts, ch 24, §19
Subsection 4, paragraph p amended

68B.35 Personal financial disclosure — certain officials, members of the general assembly, and candidates.

1. The persons specified in subsection 2 shall file a financial statement at times and in the manner provided in this section that contains all of the following:

a. A list of each business, occupation, or profession in which the person is engaged and the nature of that business, occupation, or profession, unless already apparent.

b. A list of any other sources of income if the source produces more than one thousand dollars annually in gross income. Such sources of income listed pursuant to this paragraph may be listed under any of the following categories, or under any other categories as may be established by rule:

- (1) Securities.
- (2) Instruments of financial institutions.
- (3) Trusts.
- (4) Real estate.
- (5) Retirement systems.
- (6) Other income categories specified in state and federal income tax regulations.

2. The financial statement required by this section shall be filed by the following persons:

- a.* Any statewide elected official.
- b.* The executive or administrative head or heads of any agency of state government.
- c.* The deputy executive or administrative head or heads of an agency of state government.
- d.* The head of a major subunit of a department or independent state agency whose position involves a substantial exercise of administrative discretion or the expenditure of public funds as defined under rules adopted by the board, pursuant to chapter 17A, in consultation with the department or agency.

e. Members of the banking board, the ethics and campaign disclosure board, the credit union review board, the economic development board, the employment appeal board, the environmental protection commission, the health facilities council, the Iowa finance authority, the Iowa public employees' retirement system investment board, the lottery board, the natural resource commission, the board of parole, the petroleum underground storage tank fund board, the public employment relations board, the state racing and gaming commission, the state board of regents, the tax review board, the transportation commission, the office of consumer advocate, the utilities board, the Iowa telecommunications and technology commission, and any full-time members of other boards and commissions as defined under section 7E.4 who

receive an annual salary for their service on the board or commission.

f. Members of the general assembly.

g. Candidates for state office.

h. Legislative employees who are the head or deputy head of a legislative agency or whose position involves a substantial exercise of administrative discretion or the expenditure of public funds.

3. The board, in consultation with each executive department or independent agency, shall adopt rules pursuant to chapter 17A to implement the requirements of this section that provide for the time and manner for the filing of financial statements by persons in the department or independent agency.

4. The ethics committee of each house of the general assembly shall recommend rules for adoption by each house for the time and manner for the filing of financial statements by members or employees of the particular house. The legislative council shall adopt rules for the time and manner for the filing of financial statements by legislative employees of the central legislative staff agencies. The rules shall provide for the filing of the financial statements with either the chief clerk of the house, the secretary of the senate, or other appropriate person or body.

5. A candidate for statewide office shall file a financial statement with the ethics and campaign disclosure board, a candidate for the office of state representative shall file a financial statement with the chief clerk of the house of representatives, and a candidate for the office of state senator shall file a financial statement with the secretary of the senate. Statements shall contain information concerning the year preceding the year in which the election is to be held. The statement shall be filed no later than thirty days after the date on which a person is required to file nomination papers for state office under section 43.11, or, if the person is a candidate in a special election, as soon as practicable after the certification of the name of the nominee under section 43.88, but the statement shall be postmarked no later than seven days after certification. The ethics and campaign disclosure board shall adopt rules pursuant to chapter 17A providing for the filing of the financial statements with the board and for the deposit, retention, and availability of the financial statements. The ethics committees of the house of representatives and the senate shall recommend rules for adoption by the respective houses providing for the filing of the financial statements with the chief clerk of the house or the secretary of the senate and for the deposit, retention, and availability of the financial statements. Rules adopted shall also include a procedure for notification of candidates of the duty to file disclosure statements under this section.

2001 Acts, ch 61, §12
Subsection 2, paragraph e amended

68B.38 Lobbyist's client reporting.

1. On or before January 31 and July 31 of each year, a lobbyist's client shall file with the general assembly or board a report that contains information on all salaries, fees, and retainers paid by the lobbyist's client to the lobbyist for lobbying purposes during the preceding six calendar months. Reports by a lobbyist's clients shall be filed with the same entity with which the lobbyist filed the lobbyist's registration.

2. The report due January 31 shall include a cumulative total of all salaries, fees, retainers, and reimbursements of expenses paid to the lobbyist for lobbying activities during the preceding calendar year. The secretary of the senate, chief clerk of the house, and the board shall develop forms to implement this section.

2001 Acts, ch 24, §20
Subsection 1 amended

CHAPTER 69

VACANCIES — REMOVAL — TERMS

69.2 What constitutes vacancy.

Every civil office shall be vacant if any of the following events occur:

1. A failure to elect at the proper election, or to appoint within the time fixed by law, unless the incumbent holds over.
2. A failure of the incumbent or holdover officer to qualify within the time prescribed by law.
3. The incumbent ceasing to be a resident of the state, district, county, township, city, or ward by or for which the incumbent was elected or appointed, or in which the duties of the office are to be exercised. This subsection shall not apply to appointed city officers.
4. The resignation or death of the incumbent, or of the officer-elect before qualifying.
5. The removal of the incumbent from, or forfeiture of, the office, or the decision of a competent tribunal declaring the office vacant.
6. The conviction of the incumbent of a felony, an aggravated misdemeanor, or of any public offense involving the violation of the incumbent's oath of office.
7. The board of supervisors declares a vacancy in an elected county office upon finding that the county officer has been physically absent from the county for sixty consecutive days except in the case of a medical emergency; temporary active military duty; or temporary service with another government service, agency, or department.
8. The incumbent simultaneously holding more than one elective office at the same level of government. This subsection does not apply to the county agricultural extension council or the soil and water conservation district commission.
9. An incumbent statewide elected official or

member of the general assembly simultaneously holding more than one elective office.

2001 Acts, ch 158, §11
Subsection 8 amended

69.4 Resignations.

Resignations in writing by civil officers may be made as follows, except as otherwise provided:

1. By the governor, to the general assembly, if in session, if not, to the secretary of state.
2. By state senators and representatives, and all officers appointed by the senate or house, or by the presiding officers thereof, to the respective presiding officers of the senate and house, when the general assembly is in session, and such presiding officers shall immediately transmit to the governor information of the resignation of any member thereof; when the general assembly is not in session, all such resignations shall be made to the governor.
3. By senators and representatives in Congress, all officers elected by the registered voters in the state or any district or division thereof larger than a county, or chosen by the general assembly, all judges of courts of record, all officers, trustees, inspectors, and members of all boards and commissions now or hereafter created under the laws of the state, and all persons filling any position of trust or profit in the state, for which no other provision is made, to the governor.
4. By all county and township officers, to the county auditor, except that of the auditor, which shall be to the board of supervisors.
5. By all council members and officers of cities, to the clerk or mayor.

2001 Acts, ch 56, §7
Subsection 3 amended

CHAPTER 70A

FINANCIAL AND OTHER PROVISIONS FOR PUBLIC OFFICERS AND EMPLOYEES

CHAPTER 76

PROVISIONS RELATED TO PUBLIC BONDS AND DEBT OBLIGATIONS

76.4 Permissive application of funds.

Whenever the governing authority of such political subdivision shall have on hand funds derived from any other source than taxation which may be appropriated to the payment either of interest or principal, or both principal and interest of such bonds, such funds may be so appropriated and used and the levy for the payment of the bonds correspondingly reduced. This section shall not re-

strict the authority of a political subdivision to apply sales and services tax receipts collected pursuant to chapter 422B for such purpose. Notwithstanding section 422E.1, subsection 3, a school district may apply local sales and services tax receipts collected pursuant to chapter 422E for the purposes of this section.

2001 Acts, ch 151, §1
Section amended

CHAPTER 80

DEPARTMENT OF PUBLIC SAFETY

80.8 Employees and peace officer members — salaries and compensation.

The commissioner of public safety, with the approval of the governor, shall appoint such deputies, inspectors, officers, clerical workers and other employees as may be required to properly discharge the duties of this department.

The commissioner may delegate to the peace officers of the department such additional duties in the enforcement of this chapter as the commissioner may deem proper and incidental to the duties now imposed upon them by law.

The salaries of all members and employees of the department and the expenses of the department shall be provided for by the legislative appropriation therefor. The compensation of peace officers of the department shall be fixed according to grades as to rank and length of service by the commissioner with the approval of the governor. The peace officers shall be paid additional compensation in accordance with the following formula: When peace officers have served for a period of five years, their compensation then being paid shall be increased by the sum of twenty-five dollars per month beginning with the month succeeding the foregoing described five-year period; when peace officers have served for a period of ten years, their compensation then being paid shall be increased by the sum of twenty-five dollars per month beginning with the month succeeding the foregoing described ten-year period, such sums being in addition to the increase provided herein to be paid after five years of service; when peace officers have served for a period of fifteen years, their compensation then being paid shall be increased by the sum of twenty-five dollars per month beginning with the month succeeding the foregoing described fifteen-year period, such sums being in addition to the increases previously provided for herein; when peace officers have served for a peri-

od of twenty years, their compensation then being paid shall be increased by the sum of twenty-five dollars per month beginning with the month succeeding the foregoing described twenty-year period, such sums being in addition to the increases previously provided for herein. While on active duty, each peace officer shall also receive a flat daily sum as fixed by the commissioner with the approval of the governor for meals.

A collective bargaining agreement entered into between the state and a state employee organization under chapter 20 made final after July 1, 1977, shall not include any pay adjustment to longevity pay authorized under this section.

Peace officer members of the department excluded from the provisions of chapter 20 who are injured in the line of duty shall receive paid time off in the same manner as provided to peace officer members of the department covered by a collective bargaining agreement entered into between the state and the employee organization representing such covered peace officer members under chapter 20.

2001 Acts, ch 10, §1; 2001 Acts, ch 190, §18
Unnumbered paragraphs 2 and 3 amended
NEW unnumbered paragraph 5

80.42 Sick leave benefits fund.

1. A sick leave benefits fund is established in the office of the treasurer of state under the control of the department of public safety. The moneys annually credited to the fund are appropriated to the department to pay health and life insurance monthly premium costs for retired departmental employees and beneficiaries who are eligible to receive benefits for accrued sick leave under the collective bargaining agreement with the state police officers council or pursuant to section 70A.23.

2. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys credited to the sick leave benefits fund shall be credited to the

sick leave benefits fund. Notwithstanding section 8.33, moneys credited to the sick leave benefits fund at the end of a fiscal year shall not revert to any other fund but shall remain in the fund for purposes of the fund.

3. Notwithstanding section 8.39, if funds are

needed to pay monthly premium costs as provided for in subsection 1, sufficient funds may be transferred and credited to the sick leave benefits fund from any moneys appropriated to the department.

2001 Acts, ch 186, §17
NEW section

CHAPTER 80D

RESERVE PEACE OFFICERS

80D.1 Establishment of a force of reserve peace officers.

The governing body of a city, a county, the state of Iowa, or a judicial district department of correctional services may provide, either separately or collectively through a chapter 28E agreement, for the establishment of a force of reserve peace officers, and may limit the size of the reserve force. In the case of the state, the department of public safety shall act as the governing body.

This chapter constitutes the only procedure for appointing reserve peace officers.

2001 Acts, ch 104, §1
Section amended

80D.4 Training.

Training for individuals appointed as reserve peace officers shall be provided by that law enforcement agency, but may be obtained in a community college or other facility selected by the individual and approved by the law enforcement agency. Upon satisfactory completion of training required by the Iowa law enforcement academy, the chief of police, sheriff, commissioner of public safety, or director of the judicial district department of correctional services shall certify the individual as a reserve peace officer.

2001 Acts, ch 104, §2
Section amended

80D.6 Status of reserve peace officers.

Reserve peace officers shall serve as peace officers on the orders and at the discretion of the chief of police, sheriff, commissioner of public safety or the commissioner's designee, or director of the judicial district department of correctional services or the director's designee, as the case may be.

While in the actual performance of official duties, reserve peace officers shall be vested with the same rights, privileges, obligations, and duties as any other peace officers.

2001 Acts, ch 104, §3
Section amended

80D.7 Carrying weapons.

A member of a reserve force shall not carry a weapon in the line of duty until the member has been approved by the governing body and certified by the Iowa law enforcement academy council to carry weapons. After approval and certification,

a reserve peace officer may carry a weapon in the line of duty only when authorized by the chief of police, sheriff, commissioner of public safety or the commissioner's designee, or director of the judicial district department of correctional services or the director's designee, as the case may be.

2001 Acts, ch 104, §4
Section amended

80D.9 Supervision of reserve peace officers.

Reserve peace officers shall be subordinate to regular peace officers, shall not serve as peace officers unless under the direction of regular peace officers, and shall wear a uniform prescribed by the chief of police, sheriff, commissioner of public safety, or director of the judicial district department of correctional services unless that superior officer designates alternate apparel for use when engaged in assignments involving special investigation, civil process, court duties, jail duties, and the handling of mental patients. The reserve peace officer shall not wear an insignia of rank. Each department for which a reserve force is established shall appoint a certified peace officer as the reserve force coordinating and supervising officer. A reserve peace officer force established in a judicial district department of correctional services must be directly supervised by a certified peace officer who is on duty. That certified peace officer shall report directly to the chief of police, sheriff, commissioner of public safety or the commissioner's designee, or director of the judicial district department of correctional services or the director's designee, as the case may be.

2001 Acts, ch 104, §5
Section amended

80D.11 Employee — pay.

While performing official duties, each reserve peace officer shall be considered an employee of the governing body which the officer represents and shall be paid a minimum of one dollar per year. The governing body of a city, a county, the state, or a judicial district department of correctional services may provide additional monetary assistance for the purchase and maintenance of uniforms and equipment used by reserve peace officers.

2001 Acts, ch 104, §6
Section amended

CHAPTER 84A

DEPARTMENT OF WORKFORCE DEVELOPMENT

84A.1A Workforce development board.

1. An Iowa workforce development board is created, consisting of nine voting members appointed by the governor and eight ex officio nonvoting members. The ex officio nonvoting members are four legislative members; one president or the president's designee of the university of northern Iowa, the university of Iowa, or Iowa state university of science and technology, designated by the state board of regents on a rotating basis; one representative from the largest statewide public employees' organization representing state employees; one president or the president's designee of an independent Iowa college, appointed by the Iowa association of independent colleges and universities; and one superintendent or the superintendent's designee of a community college, appointed by the Iowa association of community college presidents. The legislative members are two state senators, one appointed by the president of the senate, after consultation with the majority leader of the senate, and one appointed by the minority leader of the senate, after consultation with the president of the senate, from their respective parties; and two state representatives, appointed by the speaker after consultation with the majority and minority leaders of the house of representatives from their respective parties. Not more than five of the voting members shall be from the same political party. Of the nine voting members, one member shall represent a nonprofit organization involved in workforce development services, four members shall represent employers, and four members shall represent nonsupervisory employees. Of the members appointed by the governor to represent nonsupervisory employees, two members shall be from statewide labor organizations, one member shall be an employee representative of a labor management council, and one member shall be a person with experience in worker training programs. The governor shall consider recommendations from statewide labor organizations for the members representing nonsupervisory employees. The governor shall appoint the nine voting members of the board for a term of four years beginning and ending as provided by section 69.19, subject to confirmation by the senate, and the governor's appointments shall include persons knowledgeable in the area of workforce development.

2. A vacancy on the board shall be filled in the same manner as regular appointments are made for the unexpired portion of the regular term.

3. The board shall meet in May of each year for the purpose of electing one of its voting members as chairperson and one of its voting members as

vice chairperson. However, the chairperson and the vice chairperson shall not be from the same political party. The board shall meet at the call of the chairperson or when any five members of the board file a written request with the chairperson for a meeting. Written notice of the time and place of each meeting shall be given to each member of the board. A majority of the voting members constitutes a quorum.

4. Members of the board, the director, and other employees of the department of workforce development shall be allowed their actual and necessary expenses incurred in the performance of their duties. All expenses shall be paid from appropriations for those purposes and the department is subject to the budget requirements of chapter 8. Each member of the board may also be eligible to receive compensation as provided in section 7E.6.

5. If a member of the board has an interest, either direct or indirect, in a contract to which the department is or is to be a party, the interest shall be disclosed to the board in writing and shall be set forth in the minutes of a meeting of the board. The member having the interest shall not participate in action by the board with respect to the contract. This subsection does not limit the right of a member of the board to acquire an interest in bonds, or limit the right of a member to have an interest in a bank or other financial institution in which the funds of the department are deposited or which is acting as trustee or paying agent under a trust indenture to which the department is a party.

2001 Acts, ch 24, §21
Subsection 4 amended

84A.1B Duties of the workforce development board.

The workforce development board shall do all of the following:

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

2. Prepare a five-year strategic plan for state workforce development to implement the specific comprehensive goals, objectives, and policies of the state. All other state agencies involved in workforce development activities and the regional advisory boards for workforce development shall annually submit to the board for its review and po-

tential inclusion in the strategic plan their specific strategic plans and programs. The five-year strategic plan for state workforce development shall be updated annually.

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

4. Implement the requirements of chapter 73.

5. Approve the budget of the department of workforce development related to workforce development as prepared by the director.

6. Establish guidelines, procedures, and policies for the awarding of grants for workforce development services by the department of workforce development.

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

8. Make recommendations concerning the use of federal funds received by the department of workforce development with respect to the five-year and twenty-year workforce development plans.

9. Adopt all necessary rules related to workforce development recommended by the director prior to their adoption pursuant to chapter 17A.

2001 Acts, ch 24, §22
Subsections 5 – 8 amended

84A.4 Regional advisory boards.

1. A regional advisory board shall be established in each service delivery area as defined in section 84B.2. The members of the board shall be appointed by the governor, consistent with the requirements of federal law and in consultation with chief elected officials within the region. Chief elected officials responsible for recommendations for board membership shall include, but are not limited to, county elected officials, municipal elected officials, and community college directors. The membership of each board shall provide for equal representation of business and labor and shall include a county elected official, a city official, a representative of a school district, and a representative of a community college.

2. Each regional advisory board shall identify workforce development needs in its region, assist the workforce development board and the department of workforce development in the awarding of grants or contracts administered by the department of workforce development in that region and in monitoring the performance of the grants and contracts awarded, make annual reports as required by section 84A.1B, and make recommendations to the workforce development board and department of workforce development concerning workforce development.

3. Section 84A.1A, subsections 2, 3, and 5, apply to the members of a regional advisory board except that the board shall meet if a majority of the

members of the board, and not five, file a written request with the chairperson for a meeting. Members of a regional advisory board shall be allowed their actual and necessary expenses incurred in the performance of their duties. All expenses shall be paid from appropriations for those purposes and the department of workforce development is subject to the budget requirements of chapter 8.

2001 Acts, ch 24, §23
Subsections 2 and 3 amended

84A.5 Department's primary responsibilities.

The department of workforce development, in consultation with the workforce development board and the regional advisory boards, has the primary responsibilities set out in this section.

1. The department shall develop and implement a workforce development system which increases the skills of the Iowa workforce, fosters economic growth and the creation of new high skill and high wage jobs through job placement and training services, increases the competitiveness of Iowa businesses by promoting high performance workplaces, and encourages investment in workers.

The workforce development system shall strive to provide high quality services to its customers including workers, families, and businesses. The department shall maintain a common intake, assessment, and customer tracking system and to the extent practical provide one-stop services to customers at workforce development centers and other service access points.

The system shall include an accountability system to measure program performance, identify accomplishments, and evaluate programs to ensure goals and standards are met. The accountability system shall use information obtained from the customer tracking system, the department of economic development, the department of education, and training providers to evaluate the effectiveness of programs. The department of economic development, the department of education, and training providers shall report information concerning the use of any state or federal training or retraining funds to the department of workforce development in a form as required by the department. The accountability system shall evaluate all of the following:

a. The impact of services on wages earned by individuals.

b. The effectiveness of training services providers in raising the skills of the Iowa workforce.

c. The impact of placement and training services on Iowa's families, communities, and economy.

The department shall make information from the customer tracking and accountability system available to the department of economic development, the department of education, and other appropriate public agencies for the purpose of assist-

ing with the evaluation of programs administered by those departments and agencies and for planning and researching public policies relating to education and economic development.

2. The department is responsible for administration of unemployment compensation benefits and collection of employer contributions under chapter 96, providing for the delivery of free public employment services established pursuant to chapter 96, other job placement and training programs established pursuant to section 84A.6, and the delivery of services located throughout the state.

3. The division of labor services is responsible for the administration of the laws of this state under chapters 88, 88A, 88B, 89, 89A, 89B, 90A, 91, 91A, 91C, 91D, 91E, 92, and 94A, and sections 30.7 and 85.68. The executive head of the division is the labor commissioner, appointed pursuant to section 91.2.

4. The division of workers' compensation is responsible for the administration of the laws of this state relating to workers' compensation under chapters 85, 85A, 85B, 86, and 87. The executive head of the division is the workers' compensation commissioner, appointed pursuant to section 86.1.

5. The director shall form a coordinating committee composed of the director, the labor commissioner, the workers' compensation commissioner, and other administrators. The committee shall monitor federal compliance issues relating to coordination of functions among the divisions.

6. The department shall administer the following programs:

a. The Iowa conservation corps established under section 84A.7.

b. The workforce investment program established under section 84A.8.

c. The statewide mentoring program established under section 84A.9.

d. The workforce development centers established under chapter 84B.

7. The department shall work with the department of economic development to incorporate workforce development as a component of community-based economic development.

8. The department, in consultation with the applicable regional advisory board, shall select

service providers, subject to approval by the workforce development board for each service delivery area. A service provider in each service delivery area shall be identified to coordinate the services throughout the service delivery area. The department shall select service providers that, to the extent possible, meet or have the ability to meet the following criteria:

a. The capacity to deliver services uniformly throughout the service delivery area.

b. The experience to provide workforce development services.

c. The capacity to cooperate with other public and private agencies and entities in the delivery of education, workforce training, retraining, and workforce development services throughout the service delivery area.

d. The demonstrated capacity to understand and comply with all applicable state and federal laws, rules, ordinances, regulations, and orders, including fiscal requirements.

9. The department shall provide access to information and documents necessary for employers and payors of income, as defined in sections 252D.16 and 252G.1, to comply with child support reporting and payment requirements. Access to the information and documents shall be provided at the central location of the department of workforce development and at each workforce development center.

10. The director of the department may adopt rules pursuant to chapter 17A to charge and collect fees for enhanced or value-added services provided by the department which are not required by law to be provided by the department and are not generally available from the department. Fees shall not be charged to provide a free public labor exchange. Fees established by the director shall be based upon the costs of administering the service, with due regard to the anticipated time spent, and travel costs incurred, by personnel performing the service. The collection of fees authorized by this subsection shall be treated as repayment receipts as defined in section 8.2.

2001 Acts, ch 61, §13

Immigration service centers, pilot program; 2000 Acts, ch 1230, §12; 2001 Acts, ch 188, §11, 20, 33

Subsection 6, paragraph e stricken

CHAPTER 85

WORKERS' COMPENSATION

85.1A Proprietors, limited liability company members, limited liability partners, and partners.

A proprietor, limited liability company member, limited liability partner, or partner who is actively engaged in the proprietor's, limited liability com-

pany member's, limited liability partner's, or partner's business on a substantially full-time basis may elect to be covered by the workers' compensation law of this state by purchasing valid workers' compensation insurance specifically including the proprietor, limited liability company member, lim-

ited liability partner, or partner. The election constitutes an assumption by the employer of workers' compensation liability for the proprietor, limited liability company member, limited liability partner, or partner for the time period in which the insurance contract is in force. The proprietor, limited liability company member, limited liability partner, or partner shall accept compensation in the manner provided by the workers' compensation law and the employer is relieved from any other liability for recovery of damages, or other compensation for injury.

2001 Acts, ch 87, §1
Section amended

85.27 Services — release of information — charges — payment — debt collection prohibited.

1. The employer, for all injuries compensable under this chapter or chapter 85A, shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance and hospital services and supplies therefor and shall allow reasonably necessary transportation expenses incurred for such services. The employer shall also furnish reasonable and necessary crutches, artificial members and appliances but shall not be required to furnish more than one set of permanent prosthetic devices.

2. Any employee, employer or insurance carrier making or defending a claim for benefits agrees to the release of all information to which the employee, employer, or carrier has access concerning the employee's physical or mental condition relative to the claim and further waives any privilege for the release of the information. The information shall be made available to any party or the party's representative upon request. Any institution or person releasing the information to a party or the party's representative shall not be liable criminally or for civil damages by reason of the release of the information. If release of information is refused the party requesting the information may apply to the workers' compensation commissioner for relief. The information requested shall be submitted to the workers' compensation commissioner who shall determine the relevance and materiality of the information to the claim and enter an order accordingly.

3. Notwithstanding section 85.26, subsection 4, charges believed to be excessive or unnecessary may be referred by the employer, insurance carrier, or health service provider to the workers' compensation commissioner for determination, and the commissioner may utilize the procedures provided in sections 86.38 and 86.39, or set by rule, and conduct such inquiry as the commissioner deems necessary. Any health service provider charges not in dispute shall be paid directly to the health service provider prior to utilization of procedures provided in sections 86.38 and 86.39 or set

by rule. A health service provider rendering treatment to an employee whose injury is compensable under this section agrees to be bound by such charges as allowed by the workers' compensation commissioner and shall not recover in law or equity any amount in excess of charges set by the commissioner. When a dispute under chapter 85, 85A, or 85B regarding reasonableness of a fee for medical services arises between a health service provider and an employer or insurance carrier, the health service provider, employer, or insurance carrier shall not seek payment from the injured employee.

4. For purposes of this section, the employer is obliged to furnish reasonable services and supplies to treat an injured employee, and has the right to choose the care. The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee. If the employee has reason to be dissatisfied with the care offered, the employee should communicate the basis of such dissatisfaction to the employer, in writing if requested, following which the employer and the employee may agree to alternate care reasonably suited to treat the injury. If the employer and employee cannot agree on such alternate care, the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care. In an emergency, the employee may choose the employee's care at the employer's expense, provided the employer or the employer's agent cannot be reached immediately. An application made under this subsection shall be considered an original proceeding for purposes of commencement and contested case proceedings under section 85.26. The hearing shall be conducted pursuant to chapter 17A. Before a hearing is scheduled, the parties may choose 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. The workers' compensation commissioner shall issue a decision within ten working days of receipt of an application for alternate care made pursuant to a telephone hearing or within fourteen working days of receipt of an application for alternate care made pursuant to an in-person hearing. The employer shall notify an injured employee of the employee's ability to contest the employer's choice of care pursuant to this subsection.

5. When an artificial member or orthopedic appliance, whether or not previously furnished by the employer, is damaged or made unusable by circumstances arising out of and in the course of employment other than through ordinary wear and tear, the employer shall repair or replace it. When any crutch, artificial member or appliance, whether or not previously furnished by the employer, either is damaged or made unusable in conjunction with a personal injury entitling the employee to

disability benefits, or services as provided by this section or is damaged in connection with employee actions taken which avoid such personal injury, the employer shall repair or replace it.

6. While a contested case proceeding for determination of liability for workers' compensation benefits is pending before the workers' compensation commissioner relating to an injury alleged to have given rise to treatment, no debt collection, as defined by section 537.7102, shall be undertaken against an employee or the employee's dependents for the collection of charges for that treatment rendered an employee by any health service provider. However, the health service provider may send one itemized written bill to the employee setting forth the amount of the charges in connection with the treatment after notification of the contested case proceeding.

7. If, after the third day of incapacity to work following the date of sustaining a compensable injury which does not result in permanent partial disability, or if, at any time after sustaining a compensable injury which results in permanent partial disability, an employee, who is not receiving weekly benefits under section 85.33 or section 85.34, subsection 1, returns to work and is required to leave work for one full day or less to receive services pursuant to this section, the employee shall be paid an amount equivalent to the wages lost at the employee's regular rate of pay for the time the employee is required to leave work. The employer shall make the payments under this subsection as wages to the employee after making such deductions from the amount as legally required or customarily made by the employer from wages. Payments made under this subsection shall be required to be reimbursed pursuant to any insurance policy covering workers' compensation. Payments under this subsection shall not be construed to be payment of weekly benefits.

2001 Acts, ch 87, §2
Section numbered editorially
Subsection 3 amended

85.35 Settlement in contested case.

The parties to a contested case or persons who are involved in a dispute which could culminate in a contested case may enter into a settlement of any claim arising under this chapter or chapter 85A, 85B, or 86, providing for final disposition of the claim, provided that no final disposition affecting rights to future benefits may be had when the only dispute is the degree of disability resulting from an injury for which an award for payments or agreement for settlement under section 86.13 has been made. The settlement shall be in writing and submitted to the workers' compensation commissioner for approval.

The parties may agree that settlement proceeds, which are paid in a lump sum, are intended to compensate the injured worker at a given monthly or weekly rate over the life expectancy of

the injured worker. If such an agreement is reached, neither the weekly compensation rate which either has been paid, or should have been paid, throughout the case, nor the maximum statutory weekly rate applicable to the injury shall apply. Instead, the rate set forth in the settlement agreement shall be the rate for the case.

The settlement shall not be approved unless evidence of a bona fide dispute exists concerning any of the following:

1. The claimed injury arose out of or in the course of the employment.

2. The injured employee gave notice under section 85.23.

3. Whether or not the statutes of limitations as provided in section 85.26 have run. When the issue involved is whether or not the statute of limitations of section 85.26, subsection 2, has run, the final disposition shall pertain to the right to weekly compensation unless otherwise provided for in subsection 7 of this section.

4. The injury was caused by the employee's willful intent to injure the employee's self or to willfully injure another.

5. Intoxication, which did not arise out of and in the course of employment but which was due to the effects of alcohol or another narcotic, depressant, stimulant, hallucinogenic, or hypnotic drug not prescribed by an authorized medical practitioner, was a substantial factor in causing the employee's injury.

6. The injury was caused by the willful act of a third party directed against the employee for reasons personal to such employee.

7. This chapter or chapter 85A, 85B, 86 or 87 applies to the party making the claim.

8. A substantial portion of the claimed disability is related to physical or mental conditions other than those caused by the injury.

Approval by the workers' compensation commissioner shall be binding on the parties and shall not be construed as an original proceeding. Notwithstanding any provisions of this chapter and chapters 85A, 85B, 86 and 87, an approved settlement shall constitute a final bar to any further rights arising under this chapter and chapters 85A, 85B, 86 and 87. Such payment shall not be construed as the payment of weekly compensation.

2001 Acts, ch 87, §3
Unnumbered paragraph 1 amended and divided
NEW unnumbered paragraph 2

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 the employee earned in the employ of the employer in the last completed period of thirteen consecutive calendar weeks immediately preceding the injury. If the employee was absent from employment for reasons personal to the employee during part of the thirteen calendar weeks preceding the injury, the employee's weekly earnings shall be the amount the employee would have earned had the employee worked when work was available to other employees of the employer in a similar occupation. A week which does not fairly reflect the employee's customary earnings shall be replaced by the closest previous week with earnings that fairly represent the employee's customary earnings.

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. If the earnings of other employees cannot be determined, the employee's weekly earnings shall be the average computed for the number of weeks the employee has been in the employ of the employer.

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, volunteer emergency rescue technician as defined in section 147A.1, or emergency medical technician trainee, the earnings as a fire fighter, emergency medical care provider, reserve peace officer, volunteer ambulance driver, volunteer emergency rescue technician, or emergency medical technician trainee shall be disregarded and the volunteer fire fighter, emergency medical care provider, reserve peace officer, volunteer ambulance driver, volunteer emergency rescue technician, 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, volunteer emergency rescue technician, 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, volunteer emergency rescue technician'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, limited liability company member, limited liability partner, or officer of a corporation, the wage or the method of calculating the wage is determinative for purposes of computing the pro-

prietor's, partner's, limited liability company member's, limited liability 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.

12. In the case of an employee injured in the course of performing as a professional athlete, the basis of compensation for weekly earnings shall be one-fiftieth of total earnings which the employee has earned from all employment for the previous twelve months prior to the injury.

2001 Acts, ch 87, §4
Subsection 10 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, volunteer emergency rescue technicians, 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.

"*Employer*" also includes and applies to an eligible postsecondary institution as defined in section 261C.3, subsection 1, a school corporation, or an accredited nonpublic school if a student enrolled in the eligible postsecondary institution, school corporation, or accredited nonpublic school is providing unpaid services under a school-to-work program that includes, but is not limited to, the components provided for in section 258.10, subsection 2, paragraphs "*a*" through "*f*". However, if a student participating in a school-to-work program is participating in open enrollment under section 282.18, "*employer*" means the receiving district. "*Employer*" also includes and applies to a community college as defined in section 260C.2, if a student enrolled in the community college is providing unpaid services under a school-to-work program that includes, but is not limited to, the com-

ponents provided for in section 258.10, subsection 2, paragraphs "*a*" through "*f*", and that is offered by the community college pursuant to a contractual agreement with a school corporation or accredited nonpublic school to provide the program. If a student participating in a school-to-work program that includes, but is not limited to, the components provided for in section 258.10, subsection 2, paragraphs "*a*" through "*f*", is paid for services provided under the program, "*employer*" means any entity otherwise defined as an employer under this subsection which pays the student for providing services under the program.

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 workers' compensation 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 volunteer emergency rescue technicians or 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 volunteer emergency rescue technicians or 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 state patrol; a conservation officer; and a proprietor, limited liability company member, limited liability partner, 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 emergency rescue technician 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 or volunteer emergency rescue technician 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.

“*Worker*” or “*employee*” includes a student enrolled in a public school corporation or accredited nonpublic school who is participating in a school-to-work program that includes, but is not limited to, the components provided for in section 258.10, subsection 2, paragraphs “a” through “f”. “*Worker*” or “*employee*” also includes a student enrolled in a community college as defined in section 260C.2, who is participating in a school-to-work program that includes, but is not limited to, the components provided for in section 258.10, subsection 2, paragraphs “a” through “f”, and that is offered by the community college pursuant to a contractual agreement with a school corporation or accredited nonpublic school to provide the program.

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, limited liability company members, limited liability partners, and partners who have not elected to be covered by the workers' compensation law of this state pursuant to section 85.1A.

2001 Acts, ch 87, §5, 6

Subsection 11, unnumbered paragraph 1 amended

Subsection 13, paragraph e amended

CHAPTER 85A

OCCUPATIONAL DISEASE COMPENSATION

85A.20 Investigation.

The workers' compensation commissioner may designate the industrial hygiene physician of the Iowa department of public health and two physicians selected by the dean of the university of Iowa college of medicine, from the staff of the college, who shall be qualified to diagnose and report on occupational diseases. For the purpose of investi-

gating occupational diseases, the physicians shall have the use, without charge, of all necessary laboratory and other facilities of the university of Iowa college of medicine and of the university hospital at the state university of Iowa, and of the Iowa department of public health in performing its duties.

2001 Acts, ch 74, §1

Section amended

CHAPTER 86

DIVISION OF WORKERS' COMPENSATION

86.26 Judicial review.

Judicial review of decisions or orders of the workers' compensation 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, the workers' compensation 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, and an application for stay of agency action during the pendency of judicial review shall not be filed in the division of workers' compensation of the department of workforce development but

shall be filed with the district court. Such a review proceeding shall be accorded priority over other matters pending before the district court.

2001 Acts, ch 87, §7
Section amended

CHAPTER 87

COMPENSATION LIABILITY INSURANCE

87.11 Relief from insurance — procedures upon employer's insolvency.

When an employer coming under this chapter furnishes satisfactory proofs to the insurance commissioner of such employer's solvency and financial ability to pay the compensation and benefits as by law provided and to make such payments to the parties when entitled thereto, or when such employer deposits with the insurance commissioner security satisfactory to the insurance commissioner and the workers' compensation commissioner as guaranty for the payment of such compensation, such employer shall be relieved of the provisions of this chapter requiring insurance; but such employer shall, from time to time, furnish such additional proof of solvency and financial ability to pay as may be required by such insurance commissioner or workers' compensation commissioner. A political subdivision, including a city, county, community college, or school corporation, that is self-insured for workers' compensation is not required to submit a plan or program to the insurance commissioner for review and approval.

An employer seeking relief from the insurance requirements of this chapter shall pay to the insurance division of the department of commerce the following fees:

1. A fee of one hundred dollars, to be submitted annually along with an application for relief.
2. A fee of one hundred dollars for issuance of the certificate relieving the employer from the insurance requirements of this chapter.
3. A fee of fifty dollars, to be submitted with each filing required by the commissioner of insurance, including but not limited to the annual and quarterly financial statements, and material change statements.

If an employer becomes insolvent and a debtor under 11 U.S.C., on or after January 1, 1990, this paragraph applies. The commissioner of insurance may request of the workers' compensation

commissioner that all future payments of workers' compensation weekly benefits, medical expenses, or other payments pursuant to chapter 85, 85A, 85B, 86, or 87 be commuted to a present lump sum. The workers' compensation commissioner shall fix the lump sum of probable future medical expenses and weekly compensation benefits, or other benefits payable pursuant to chapter 85, 85A, 85B, 86, or 87, capitalized at their present value upon the basis of interest at the rate provided in section 535.3 for court judgments and decrees. The commissioner of insurance shall be discharged from all further liability for the commuted workers' compensation claim upon payment of the present lump sum to either the claimant, or a licensed insurer for purchase of an annuity or other periodic payment plan for the benefit of the claimant.

The commissioner of insurance shall not be required to pay more for all claims of an insolvent self-insured employer than is available for payment of such claims from the security given under this section.

Notwithstanding contrary provisions of section 85.45, any future payment of medical expenses, weekly compensation benefits, or other payments by the commissioner of insurance from the security given under this section, pursuant to chapter 85, 85A, 85B, 86, or 87, shall be deemed an undue expense, hardship, or inconvenience upon the employer for purposes of a full commutation pursuant to section 85.45, subsection 2.

Financial statements provided to the commissioner of insurance pursuant to this section may be held as confidential, proprietary trade secrets, pursuant to section 22.7, subsection 3, upon the request of the employer, subject to rules adopted by the commissioner of insurance, and are not subject to disclosure or examination under chapter 22.

2001 Acts, ch 69, §1
Unnumbered paragraph 1 amended

CHAPTER 88

OCCUPATIONAL SAFETY AND HEALTH

88.3 Definitions.

Wherever used in this chapter, unless the context clearly requires a different meaning:

1. “*Appeal board*” means the employment appeal board created under section 10A.601.

2. “*Commissioner*” means the labor commissioner appointed pursuant to section 91.2, or the commissioner’s designee.

3. “*Emergency temporary standards*” means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization under procedures whereby it can be determined by the commissioner that persons interested and affected by the scope or provisions of the standard have reached substantial agreement on its adoption, and was formulated in a manner which afforded an opportunity for diverse views to be considered or is an emergency temporary standard provided by the secretary pursuant to and in conformance with the provisions of the federal law.

4. “*Employee*” means an employee of an employer who is employed in a business of the employer. “*Employee*” also means an inmate as defined in section 85.59, when the inmate works in connection with the maintenance of the institution, in an industry maintained in the institution, or while otherwise on detail to perform services for pay. “*Employee*” also means a volunteer involved in responses to hazardous waste incidences. The employer of a volunteer is that entity which provides or which is required to provide workers’ compensation coverage for the volunteer.

5. “*Employer*” means a person engaged in a business who has one or more employees and also includes the state of Iowa, its various departments and agencies, and any political subdivision of the state.

6. “*Federal law*” means the Act of Congress approved December 29, 1970, 84 Stat. 1590, officially cited as the “Occupational Safety and Health Act of 1970 (29 U.S.C. 651 – 678).”

7. “*Imminent danger*” means a condition or practice in any place of employment which is such that a danger exists which will reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures of this chapter, exclusive of the procedures set forth in section 88.11.

8. “*Occupational safety and health standard*” means a standard which requires conditions or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or health-

ful employment and places of employment.

9. “*Person*” means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives, or any organized group of persons.

10. “*Secretary*” means the secretary of labor of the United States.

2001 Acts, ch 24, §24
Subsection 8 amended

88.5 Occupational safety and health standards.

1. *Promulgation of rules.*

a. As soon as practicable following July 1, 1972, the commissioner shall by rule, adopt and promulgate those occupational safety and health standards, which would result in improved safety or health for employees; provided, that the commissioner shall adopt no such standard unless the same has been adopted and promulgated as a permanent standard by the secretary in accordance with the procedures set forth in the federal law. In the event that any such federal standard is subsequently amended, modified, repealed, or substituted by a new standard, the commissioner shall, within ninety days, review such amendment, modification, repeal or substitution, and take such action with respect to the state standards, including the repeal or substitution of the same, as will conform the state standards to those federal standards then in effect.

b. Before adopting, modifying, or revoking any standard by rule pursuant to this section, the commissioner shall hold a public hearing on the subject matter of the proposed adoption, modification, or revocation. An interested person may appear and be heard at the hearing, in person or by agent or counsel. The provisions of this section are in addition to the requirements of chapter 17A.

c. Notwithstanding other provisions of this section, upon or following July 1, 1972, the commissioner may adopt as interim standards those standards adopted by the secretary in conformance with section 6(a) of the federal law, provided that any such standard so adopted shall cease to be effective on April 28, 1973, unless the commissioner shall have initiated the procedures for adopting a permanent standard in conformance with and following the procedures set forth in this section, in which case the interim standard shall remain in effect pending the adoption of the permanent standard. In the event that any such federal interim standard is subsequently amended, modified, repealed, or substituted by a new interim standard, the commissioner shall, within thirty days, review such amendment, mod-

ification, repeal or substitution, and take such action with respect to the state interim standards, including the repeal or substitution of the same, as will conform the state interim standards to those federal interim standards then in effect.

2. *Toxic materials and other harmful physical agents.* The commissioner, in promulgating standards dealing with toxic materials or harmful physical agents under this subsection, shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of the employee's working life. Development of standards under this subsection shall be based upon research, demonstrations, experiments, and such other information as may be appropriate, but in any event shall conform with the provisions of subsection 1 of this section. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws. Whenever practicable, a standard promulgated shall be expressed in terms of objective criteria and of the performance desired.

3. *Temporary variances.*

a. Any employer may apply to the commissioner for a temporary order granting a variance from a standard or any provision thereof promulgated under this section. Such temporary order shall be granted only if the employer files an application which meets the requirements of paragraph "b" of this subsection and establishes that the employer is unable to comply with the standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standards or because necessary construction or operation of the facilities cannot be completed by the effective date, that the employer is taking all available steps to safeguard the employer's employees against the hazards that are covered by the standard, and that the employer has an effective program for coming into compliance with this standard as quickly as practicable. Any temporary order issued under this paragraph shall prescribe the practices, means, methods, operations, and processes which the employer must adopt and use while the order is in effect and state in detail the employer's program for coming into compliance with the standard. Such a temporary order may be granted only after notice to employees and an opportunity for a hearing, provided that the commissioner may issue one interim order to be effective until a decision is made on the basis of the hearing. No temporary order may be in effect longer than the period needed by the employer to achieve compliance with the standard, or one year,

whichever is shorter except that such an order may be renewed not more than twice so long as the requirements of this paragraph are met and an application for renewal is filed at least ninety days prior to the expiration date of the order. No interim renewal of an order may remain in effect for longer than one hundred and eighty days.

b. An application for a temporary order under this subsection shall contain:

(1) A specification of the standard or portion thereof from which the employer seeks a variance.

(2) A representation by the employer, supported by representations from qualified persons having firsthand knowledge of the fact represented, that the employer is unable to comply with the standard or portion thereof and a detailed statement of those reasons therefor.

(3) A statement of the steps the employer has taken and will take (with specific dates) to protect employees against the hazard covered by the standard.

(4) A statement of when the employer expects to be able to comply with the standard and what steps the employer has taken and what steps the employer will take (with dates specified) to come into compliance with the standard.

(5) A certification that the employer has informed the employer's employees of any application by giving a copy thereof to their authorized employee representative, posting a statement giving a summary of the application and specifying where a copy may be examined at the place or places where notices to employees are normally posted, and by other reasonably appropriate means as may be directed by the commissioner.

(6) A description of how employees have been informed shall be contained in the certification. The information to employees shall also inform them of their right to petition the commissioner for a hearing.

4. *Labels, warnings, protective equipment.* Any standard promulgated under this section shall prescribe the use of labels or other appropriate forms of warning as are necessary to insure that employees are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure. Where appropriate, such standard shall also prescribe suitable protective equipment and control or technological procedures to be used in connection with such hazards and shall provide for monitoring or measuring employee exposure at such locations and intervals, and in such manner as may be necessary for the protection of employees. In addition, where appropriate, any such standard shall prescribe the type and frequency of medical examinations or other tests which shall be made available, by the employer or at the employer's cost, to employees exposed to such hazard in order to most effectively determine whether the health of such employee is adversely affected by such ex-

posure. The results of such examinations or tests shall be furnished to the commissioner, and if released by the employee, shall be furnished to the employee's physician and the employer's physician.

5. *Emergency temporary standards.* The commissioner shall provide for an emergency temporary standard to take immediate effect if the commissioner determines that employees are exposed to grave danger from exposure from substances or agents determined to be toxic or physically harmful or from new hazards and if such emergency temporary standard is necessary to protect the employees from such danger. Such emergency standard shall cease to be effective and shall no longer be applicable after the lapse of six months following the effective date thereof unless the commissioner has initiated the procedures provided for under this chapter, for the purpose of promulgating a permanent standard as provided in subsection 1 of this section in which case the emergency temporary standard will remain in effect until the permanent standard is adopted and becomes effective. Abandonment of the procedure for such promulgation by the commissioner shall terminate the effectiveness and applicability of the emergency temporary standard.

6. *Permanent variance.* Any affected employer may apply to the commissioner for a rule or order for a permanent variance from a standard promulgated under this section. Affected employees shall be given notice of each such application and an opportunity to participate in a hearing. The commissioner shall issue such rule or order if the commissioner determines on the record, after opportunity for an inspection where appropriate and a hearing, that the proponent of the variance has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used by an employer will provide employment and places of employment to the employer's employees which are as safe and healthful as those which would prevail if the employer complied with the standard. The rule or order so issued shall prescribe the conditions the employer must maintain, and the practices, means, methods, operations, and processes which the employer must adopt and utilize to the extent that they differ from the standard in question. Such a rule or order may be modified or revoked upon application by an employer, employees, or by the commissioner on the commissioner's own motion, in the manner prescribed for its issuance under this subsection at any time after six months from its issuance.

7. *Special variance.* Where there are conflicts with standards, rules, or regulations promulgated by any federal agency other than the United States department of labor, special variances from standards, rules, or regulations promulgated under this chapter may be granted to

avoid such regulatory conflicts. Such variances shall take into consideration the safety of the employees involved. Notwithstanding any other provision of this chapter, and with respect to this paragraph, any employer seeking relief under this provision must file an application with the commissioner and the commissioner shall forthwith hold a hearing at which employees or other interested persons, including representatives of the federal regulatory agencies involved, may appear and, upon the showing that such a conflict indeed exists, the commissioner may issue a special variance until the conflict is resolved.

8. *Priority for setting standards.* In determining the priorities for establishing standards under this section, the commissioner shall give due regard to the urgency of the need for mandatory safety and health standards for particular industries, trades, crafts, occupations, businesses, workplaces or work environments.

9. *Product safety.* Standards promulgated under this chapter shall not be different from federal standards applying to products distributed or used in interstate commerce unless such standards are required by compelling local conditions and do not unduly burden interstate commerce. This provision does not apply to customized products or parts not normally available on the open market, or to optional parts or additions to products which are ordinarily available with such optional parts or additions.

10. *Judicial review before enforcement.* The provisions of the Iowa administrative procedure Act shall apply to judicial review of standards issued under this section. Notwithstanding any provision of the Iowa administrative procedure Act to the contrary, a person who is aggrieved or adversely affected by a standard issued under this section must seek judicial review of such standard prior to the sixtieth day after such standard becomes effective. All determinations of the commissioner shall be conclusive if supported by substantial evidence in the record as a whole.

11. *Fire fighters clothing and equipment.* The commissioner shall establish standards and promulgate rules for protective helmets, boots, fire coats, trousers, gloves, work uniforms and may set standards for any other protective clothing or equipment which shall be worn or used by fire fighters within the state. In establishing these standards, the commissioner shall consider the standards of or proposed by the national fire protection association, the international association of fire fighters and any federal agency which may have such standards. The commissioner shall provide a copy of the standards, rules and any changes thereto to each fire department operating in this state. The standards established and the rules promulgated hereunder shall apply to protective clothing and equipment worn or used by every fire fighter in the state, provided that the standards and rules shall be advisory rather than

mandatory for volunteer fire departments.

The standards promulgated by the commissioner under the provisions of this subsection shall be effective for all equipment purchased after January 1, 1979. All equipment for which standards are established under the provisions of this subsection shall meet the standards promulgated under the provisions of this subsection prior to January 1, 1981.

12. *Railway sanitation and shelter.* A rail-

way corporation within the state shall provide adequate sanitation and shelter for all railway employees. The commissioner shall adopt rules requiring railway corporations within the state to provide a safe and healthy workplace. The commissioner shall enforce the requirements of this section upon the receipt of a written complaint.

2001 Acts, ch 24, §25
Subsection 7 amended

CHAPTER 89

BOILERS AND UNFIRED STEAM PRESSURE VESSELS

89.2 Definitions.

For the purpose of this chapter unless the context otherwise requires:

1. *“Boiler”* means a vessel in which water or other liquids are heated, steam or other vapors are generated, steam or other vapors are superheated, or any combination thereof, under pressure or vacuum by the direct application of heat.

2. *“Commissioner”* means the labor commissioner or the labor commissioner’s designee.

3. *“Exhibition boiler”* means a boiler which is operated in the state for nonprofit purposes including, but not limited to, exhibitions, fairs, parades, farm machinery shows, or any other event of an historical or educational nature. An *“exhibition boiler”* includes steam locomotives, traction and portable steam engines, and stationary boilers of the firetube, watertube, and returntube class, model or miniature, and may be riveted, riveted and welded, or all welded construction, if used within the state solely for nonprofit purposes.

4. *“Power boiler”* means a boiler in which steam or other vapor is generated at a pressure of more than fifteen pounds per square inch or a water boiler intended for operation at pressures in excess of one hundred sixty pounds per square inch or temperatures in excess of 250 degrees F.

5. *“Public assembly”* means the assembly of people in any of the following:

a. A building or structure primarily used as a theater, motion picture theater, museum, arena, exhibition hall, school, college, dormitory, bowling alley, physical fitness center, family entertain-

ment center, lodge hall, union hall, pool hall, casino, place of worship, funeral home, institution of health and custodial care, hospital, or child care or adult day services facility.

b. A building or structure, a portion of which is primarily used for amusement, entertainment, or instruction.

c. A building or structure owned by or leased to the state or any of its agencies or political subdivisions.

However, for purposes of this chapter, *“public assembly”* does not include the assembly of people in buildings or structures containing only eating and drinking establishments or in any building used exclusively by an employer for training or instruction of its own employees.

6. *“Special inspector”* means an inspector who holds a commission from the commissioner and who is not a state employee.

7. *“Steam heating boiler”* means a boiler operating at not more than fifteen pounds per square inch; or a hot water heating boiler operating at not more than one hundred sixty pounds per square inch and not more than 250 degrees F. at the boiler outlet.

8. *“Unfired steam pressure vessel”* means a vessel or container used for the containment of steam pressure either internal or external in which the pressure is obtained from an external source.

2001 Acts, ch 24, §26; 2001 Acts, ch 64, §1
See Code editor’s note to §12.65
Subsection 5, paragraph a amended

CHAPTER 90A

BOXING AND WRESTLING

90A.12 Age requirement for amateur boxing contestants.

1. A person shall not participate as a contes-

tant in an organized amateur boxing contest unless each contestant participating in the contest meets the age requirements of USA boxing incor-

porated, or its successor organization. A birth certificate, or similar document validating the contestant's date of birth, must be submitted at the time of the prefight physical examination in order to determine eligibility.

2. Subsection 1 does not apply to contestants

in regional, national, or international organized amateur boxing contests or to organized amateur boxing contests involving contestants who are serving in the military service.

2001 Acts, ch 188, §23
Subsection 1 amended

CHAPTER 91A

WAGE PAYMENT COLLECTION

91A.13 Travel time to worksite — when compensable.

Unless a collective bargaining agreement provides otherwise, an employee is not entitled to compensation for the time that an employee spends traveling to and from the worksite on transportation provided by the employer, when during that time, the employee performs no work, the transportation is provided by the employer as

a convenience for the employee, and the employee is not required by the employer to use that means of transportation to the worksite. An employee is entitled to compensation for the time that an employee spends traveling between worksites if the travel is done during working hours.

2001 Acts, ch 121, §1
NEW section

CHAPTER 92

CHILD LABOR

92.1 Street occupations — migratory labor.

1. No person under ten years of age shall be employed or permitted to work with or without compensation at any time within this state in street occupations of peddling, shoe polishing, the distribution or sale of newspapers, magazines, periodicals or circulars, nor in any other occupations in any street or public place. The labor commissioner shall, when ordered by a judge of the juvenile court, issue a work permit as provided in this

chapter to a person under ten years of age.

2. No person under twelve years of age shall be employed or permitted to work with or without compensation at any time within this state in connection with migratory labor, except that the labor commissioner may upon sufficient showing by a judge of the juvenile court, issue a work permit as provided in this chapter to a person under twelve years of age.

2001 Acts, ch 24, §27
Subsection 1 amended

CHAPTER 96

EMPLOYMENT SECURITY — UNEMPLOYMENT COMPENSATION

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 department. But the individual shall not be disqualified if the department 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 department, 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 department, 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 benefits paid which are based on the wages paid by the transferring employer shall be charged to the unemployment compensation fund provided that the acquiring employer has not received, or will not receive, a partial transfer of experience under the provisions of section 96.7, subsection 2, paragraph "b". Relief of charges under this paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

j. The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm of completion of an employment assignment and who seeks reassignment. Failure of the individual to notify the temporary employment firm of completion of an employment assignment within three working days of the completion of each employment assignment under a contract of hire shall be deemed a voluntary quit unless the individual was not advised in writing of the duty to notify the temporary employment firm upon completion of an employment assignment or the individual had good cause for not contacting the temporary employment firm within three working days and notified the firm at the first reasonable opportunity thereafter.

To show that the employee was advised in writing of the notification requirement of this paragraph, the temporary employment firm shall advise the temporary employee by requiring the temporary employee, at the time of employment with the temporary employment firm, to read and sign a document that provides a clear and concise explanation of the notification requirement and the consequences of a failure to notify. The document shall be separate from any contract of employment and a copy of the signed document shall be provided to the temporary employee.

For purposes of this paragraph:

(1) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their work force during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.

(2) "Temporary employment firm" means a person engaged in the business of employing temporary employees.

2. *Discharge for misconduct.* If the department 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 department 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 department finds that an individual has failed, without good cause, either to apply for available, suitable work when directed by the department or to accept suitable work when offered that individual. The department 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 department on forms provided by the department. 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 department 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 department 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 department 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 department 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 paragraph "a", "b", or "c", were paid on a retroactive basis for the same period, or any part thereof, the department shall recover the excess amount of benefits paid by the department 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. A deduction shall not be made from the amount of benefits payable for a week for individuals receiving federal social security pensions to take into account the individuals' contributions to the pension program.

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 in-

dividual 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 department 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 department 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 em-

ployer 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 department 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 department 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 department 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.

2001 Acts, ch 111, §1, 6

Subsection 5, unnumbered paragraph 2 amended

96.7 Employer contributions and reimbursements.

1. *Payment.* Contributions accrue and are payable, in accordance with rules adopted by the department, on all taxable wages paid by an employer for insured work.

2. *Contribution rates based on benefit experience.*

a. (1) The department 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.

The account of an employer shall not be charged with benefits paid to an individual for unemployment that is directly caused by a major natural disaster declared by the president of the United States, pursuant to the federal Disaster Relief Act

of 1974, if the individual would have been eligible for federal disaster unemployment assistance benefits with respect to that unemployment but for the individual's receipt of regular 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 department 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 department 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 department 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 department within ninety days from the date of the partial transfer, and the succession is approved by the predecessor employer or employers and the department.

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 department shall include notice of the requirement of disclosure in the department'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 department 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 department to have the employer's rate redetermined by com-

binning 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 department 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 department, 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 department, for less than five periods of four consecutive calendar quarters immediately preceding the computation date.

d. The department 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 department 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 during the four completed calendar quarters immediately preceding the computation date. If an employer's taxable wages qualify the employer for two separate benefit ratio ranks the employer shall be afforded the benefit ratio rank assigned the lower contribution rate. Employers with identical benefit ratios shall be assigned to the same benefit ratio rank.

Benefit Ratio Rank	Approximate Cumulative Taxable Payroll Limit	Contribution Rate Tables							
		1	2	3	4	5	6	7	8
1	4.8%	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
2	9.5%	0.0	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 department shall fix the contribution rate for each employer and notify the employer of the rate by regular mail to the last known address of the employer. An employer may appeal to the department 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 department may affirm, set aside, or modify its former determination and may grant the employer a new contribution rate. The department shall notify the employer of its decision by regular mail. Judicial review of action of the department 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 contributions become due at a disputed contribution rate prior to the employer receiving a decision reversing benefits, the employer shall pay the contributions at the disputed rate but shall be eligible for a refund pursuant to section 96.14, subsection 5. 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 6, 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 department under paragraph "e" and the delinquent quarterly report is also submitted not later than thirty days after the department 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 6, the department shall examine the reports and determine the correct amount of contributions due, and the amount so determined by the department shall be the contributions payable. If the contributions found due are greater than the amount paid, the department 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 department discovers from the examination of the reports required pursuant to section 96.11, subsection 6, 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 department 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 department 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 department 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 department 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 department, of each affected employing unit or employer.

The affected employing unit or employer may appeal in writing to the department from the initial determination. An appeal shall not be entertained for any reason by the department unless the appeal is filed with the department 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 department. 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 department, of each affected employing unit or employer.

The department'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 department'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 department believes that the collection of contributions payable or benefits reimbursable will be jeopardized by delay, the department 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 department may immediately file a lien against the employer which may be followed by the issuance of a distress warrant.

The department 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 department.

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 department 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 con-

tributions 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 department shall annually calculate a base rate for each calendar year. The base rate is equal to the sum of the benefits charged to governmental contributory employers in the calendar year immediately preceding the computation date plus or minus the difference between the total benefits and contributions paid by governmental contributory employers since January 1, 1980, which sum is divided by the total taxable wages reported by governmental contributory employers during the calendar year immediately preceding the computation date, rounded to the next highest one-tenth of one percent. Excess contributions from the years 1978 and 1979 shall be used to offset

benefits paid in any calendar year where total benefits exceed total contributions of governmental contributory employers. The contribution rate as a percentage of taxable wages of the employer shall be assigned as follows:

If the percentage of excess rank is:	The contribution rate shall be:	Approximate cumulative taxable payroll
1	Base Rate - 0.9	14.3
2	Base Rate - 0.6	28.6
3	Base Rate - 0.3	42.9
4	Base Rate	57.2
5	Base Rate + 0.3	71.5
6	Base Rate + 0.6	85.8
7	Base Rate + 0.9	100.0

If a governmental contributory employer is grouped into two separate percentage of excess ranks, the employer shall be assigned the lower contribution rate of the two percentage of excess ranks. Notwithstanding the provisions of this paragraph, a governmental contributory employer shall not be assigned a contribution rate less than one-tenth of one percent of taxable wages unless the employer has a positive percentage of excess greater than five percent.

Governmental entities electing to be contributory employers which are not eligible to be assigned a contribution rate under this paragraph shall be assigned the base rate as a contribution rate for the calendar year.

c. For the purposes of this subsection, "governmental reimbursable employer" means an employer which makes payments to the department 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 department 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 bill-

ing 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 the entire enterprise or business of a reimbursable governmental entity is sold or otherwise transferred to a subsequent employing unit and the acquiring employing unit continues to operate the enterprise or business, the acquiring employing unit shall assume the position of the reimbursable governmental entity with respect to the reimbursable governmental entity's liability to pay the department for reimbursable benefits based on the governmental entity's payroll to the same extent as if no change in the ownership or control of the enterprise or business had occurred, whether or not the acquiring employing unit elected or elects, or was or is eligible to elect, to become a reimbursable employer with respect to the acquiring employing unit's own payroll prior to or after the acquisition of the governmental entity's 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 department 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 department 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 department 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 department 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 department, in accordance with rules, shall notify each nonprofit organization of any determination made by the department 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 department 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 department 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 department setting forth the grounds for the application. The department 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 the entire enterprise or business of a reimbursable nonprofit organization is sold or otherwise transferred to a subsequent employing unit and the acquiring employing unit continues to operate the enterprise or business, the acquiring employing unit shall assume the position of the reimbursable nonprofit organization with respect to the nonprofit organization's liability to pay the department for reimbursable benefits based on the nonprofit organization's payroll to the same extent as if no change in the ownership or control of the enterprise or business had occurred, whether or not the acquiring employing unit elected or elects, or was or is eligible to elect, to become a reimbursable employer with respect to the acquiring employing unit's own payroll prior to or after the acquisition of the nonprofit organization's enterprise or business.

9. *Indian tribes.*

a. For purposes of this chapter, employment by an Indian tribe shall be covered in the same manner and terms as provided for governmental entities and the same exclusions that are applicable for governmental entities shall also apply.

b. In financing benefits paid to employees of an Indian tribe under this chapter, a contribution rate shall be determined and contributions shall be assessed and collected from an Indian tribe in the same manner provided in this chapter for contributory employers, except that an Indian tribe shall have the option of electing to become a governmental reimbursable employer. An Indian tribe shall have the option to make a separate election as provided in this paragraph for itself and for each subdivision, subsidiary, or business enterprise wholly owned by the Indian tribe. The reimbursable status of an Indian tribe shall be in the same manner, to the same extent, and on the same terms as are applicable to all governmental reimbursable employers under this chapter.

c. If the department determines that an Indian tribe has failed to make any payment required pursuant to this chapter after providing the Indian tribe with ninety days' notice of this failure, the department may issue a determination that ceases coverage of all employment by that Indian tribe until such time as all payments are received by the department.

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 department 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 department shall establish a group account for the employers effective as of the beginning of the calendar quarter in which the department 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 department 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 department 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 department 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 department 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 department 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 department shall adopt rules prescribing the manner in which the surcharge will be collected. Interest shall accrue on all unpaid surcharges under this subsection at the same rate as on regular contributions and shall be collectible in the same manner. The surcharge shall not affect the computation of regular contributions under this chapter.

A special fund to be known as the temporary emergency surcharge fund is created in the state treasury. The special fund is separate and distinct from the unemployment compensation fund. All contributions collected from the temporary emer-

agency 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 department 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 department 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”, subject to the surcharge formula to be developed by the department under this paragraph. The department shall develop a surcharge formula that provides a target revenue level of no greater than six million five hundred twenty-five thousand dollars annually. The department shall reduce the administrative contribution surcharge established for any calendar year proportionate to any federal government funding that provides an increased allocation of moneys for workforce development offices, under the federal employment services financing reform legislation. Any administrative contribution surcharge revenue that is collected in calendar year 2002 in excess of six million five hundred twenty-five thousand dollars shall be deducted from the amount to be collected in calendar year 2003 before the department establishes the administrative contribution surcharge. The department 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 percentage surcharge shall be capped at a maximum of seven dollars per employee. The department 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. Interest accrued and collected under this paragraph and interest earned and credited to the fund under paragraph “b” shall be used by the department only for the purposes set forth in paragraph “c”.

b. A special fund to be known as the adminis-

trative 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 department only upon appropriation by the general assembly and only for personnel and nonpersonnel costs of rural and satellite departmental offices in population centers of less than twenty thousand. To the extent possible, the department shall colocate the rural and satellite departmental offices funded by the surcharge provided for in this subsection at available community college facilities throughout the state. If collocation at community college facilities is not feasible, the department shall attempt, to the extent possible, to colocate offices in the facilities of other government entities. Moneys in the fund shall not be used for purposes other than those identified in this paragraph or identified in the appropriation of the moneys in the fund by the general assembly.

(1) Moneys in the fund may be used to provide any of the following services to businesses:

(a) Use of a business representative to build one-on-one relationships with businesses. A business representative may provide any of the following:

(i) Workforce consulting in the form of customized strategies to attract, retain, and upgrade the skills of an employer’s workforce.

(ii) General and customized recruitment.

(iii) Workplace skill testing and analysis in the form of skill level, aptitude, and ability assessment.

(iv) Employer specific job descriptions, employee handbooks, applications, and other relevant personnel forms.

(b) Labor market surveys and analyses which may include the compilation and dissemination of occupational and wage information.

(c) Contact information and referral services related to any of the following issues:

(i) Workers’ compensation.

(ii) Wage and worker rights.

(iii) Registration.

(iv) The federal Occupational Safety and Health Act of 1970 and occupational safety and health standards.

(v) Boiler and elevator regulations.

(vi) Contractor registration.

(vii) Immigration services.

(viii) Unemployment contributions.

(d) A statewide computer networking process for employers and individuals regarding available positions and qualified applicants.

(e) Crosstraining services for workforce development staff.

(2) Moneys in the fund may be used to provide any of the following services to individuals:

(a) Outreach, intake, and orientation services related to any of the following:

- (i) Job search and interviewing assistance.
- (ii) Initial assessment of skill levels, aptitudes, abilities, and support service needs.
- (iii) Proficiency testing.
- (iv) Resume development and preparation.
- (v) Referral to training and customized skill upgrading.
- (vi) Career counseling including assessment and analysis.

(b) Contact information and referral for supportive services including but not limited to transportation, housing, and child care.

(c) Labor market surveys and analyses.

(d) Job development and placement services.

(e) Resource centers that provide individuals with computer access for electronic job search, resume development, career exploration, and keyboard and software training. A resource center may also be equipped with employment, training, and career information including but not limited to employment opportunities available with local employers.

(f) Information and assistance with filing for unemployment compensation benefits.

(3) Moneys in the fund shall not be used for any of the following purposes:

(a) Services that are not included in subparagraphs (1) and (2).

(b) Unemployment tax system renovation and computer upgrades.

(c) Specific consultation services relating to the federal Occupational Safety and Health Act of 1970 and occupational safety and health standards.

(d) Services which are currently provided by other state agencies.

(e) Workforce development regional advisory board member expenses.

(f) Supportive services including but not limited to transportation, housing, and child care.

d. This subsection is repealed July 1, 2003, and the repeal is applicable to contribution rates for calendar year 2004 and subsequent calendar years.

2001 Acts, ch 111, §2, 6; 2001 Acts, ch 163, §1, 2; 2001 Acts, 1st Ex, ch 2, §1, 4

2001 amendment to subsection 2, paragraph a, subparagraph (2) is effective May 25, 2001, and applies retroactively to January 1, 2001; 2001 Acts, ch 163, §2

Annual review of rural and satellite workforce development offices; development of performance measures; fee-based employer services pilot projects; reports to governor and general assembly; 2001 Acts, 1st Ex, ch 2, §2, 3

Subsection 2, paragraph a, subparagraph (2), NEW unnumbered paragraph 5

NEW subsection 9

Subsection 12, paragraphs a, c, and d amended

96.11 Duties, powers, rules — privilege.

1. *Duties and powers of director.* It shall be the duty of the director to administer this chapter; and the director shall have power and authority to adopt, amend, or rescind pursuant to chapter 17A

such rules, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as the director deems necessary or suitable to that end. Not later than the fifteenth day of December of each year, the director shall submit to the governor a report covering the administration and operation of this chapter during the preceding fiscal year and shall make such recommendations for amendments to this chapter as the director deems proper. Such report shall include a balance sheet of the moneys in the fund. Whenever the director believes that a change in contribution or benefits rates will become necessary to protect the solvency of the fund, the director shall promptly so inform the governor and the legislature, and make recommendations with respect thereto.

2. *General and special rules.* Each employer shall post and maintain printed statements of all rules of the department in places readily accessible to individuals in the employer's service, and shall make available to each such individual at the time the individual becomes unemployed a printed statement of such rules relating to the filing of claims for benefits. Such printed statements shall be supplied by the department to each employer without cost to the employer.

3. *Publications.* The director shall cause to be printed for distribution to the public the text of this chapter, the department's general rules, its annual reports to the governor, and any other material the director deems relevant and suitable and shall furnish the same to any person upon application therefor.

The department shall prepare and distribute to the public as labor force data, only that data adjusted according to the current population survey and other nonlabor force statistics which the department determines are of interest to the public.

4. *Bonds.* The director may bond any employee handling moneys or signing checks.

5. *Employment stabilization.* The director, with the advice and aid of the appropriate bureaus of the department, shall take all appropriate steps to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining and vocational guidance; to investigate, recommend, advise, and assist in the establishment and operation, by municipalities, counties, school districts, and the state, of reserves for public works to be used in times of business depression and unemployment; to promote the reemployment of unemployed workers throughout the state in every other way that may be feasible; and to these ends to carry on and publish the results of investigations and research studies.

6. *Records, reports, and confidentiality.*

a. An employing unit shall keep true and accurate work records, containing information required by the department. The records shall be open to inspection and copying by an authorized

representative of the department at any reasonable time and as often as necessary. An authorized representative of the department may require from an employing unit a sworn or unsworn report, with respect to individuals employed by the employing unit, which the department deems necessary for the effective administration of this chapter.

b. (1) The department shall hold confidential the information obtained from an employing unit or individual in the course of administering this chapter and the initial determination made by a representative of the department under section 96.6, subsection 2, as to the benefit rights of an individual. The department shall not disclose or open this information for public inspection in a manner that reveals the identity of the employing unit or the individual, except as provided in subparagraph (3) or paragraph "c".

(2) A report or statement, whether written or verbal, made by a person to a representative of the department or to another person administering this law is a privileged communication. A person is not liable for slander or libel on account of the report or statement unless the report or statement is made with malice.

(3) Information obtained from an employing unit or individual in the course of administering this chapter and an initial determination made by a representative of the department under section 96.6, subsection 2, as to benefit rights of an individual shall not be used in any action or proceeding, except in a contested case proceeding or judicial review under chapter 17A. However, the department shall make information, which is obtained from an employing unit or individual in the course of administering this chapter and which relates to the employment and wage history of the individual, available to a county attorney for the county attorney's use in the performance of duties under section 331.756, subsection 5. Information in the department's possession which may affect a claim for benefits or a change in an employer's rating account shall be made available to the interested parties. The information may be used by the interested parties in a proceeding under this chapter to the extent necessary for the proper presentation or defense of a claim.

c. Subject to conditions as the department by rule prescribes, information obtained from an employing unit or individual in the course of administering this chapter and an initial determination made by a representative of the department under section 96.6, subsection 2, as to benefit rights of an individual may be made available for purposes consistent with the purposes of this chapter to any of the following:

(1) An agency of this or any other state or a federal agency responsible for the administration of an unemployment compensation law or the maintenance of a system of public employment offices.

(2) The internal revenue service of the United States department of the treasury.

(3) The Iowa department of revenue and finance.

(4) The social security administration of the United States department of health and human services.

(5) An agency of this or any other state or a federal agency responsible for the administration of public works or the administration of public assistance to unemployed individuals.

(6) Colleges, universities, and public agencies of this state for use in connection with research of a public nature, provided the department does not reveal the identity of an employing unit or individual.

(7) An employee of the department, a member of the general assembly, or a member of the United States Congress in connection with the employee's or member's official duties.

(8) The United States department of housing and urban development and representatives of a public housing agency.

d. Upon request of an agency of this or another state or of the federal government which administers or operates a program of public assistance or child support enforcement under either the law of this or another state or federal law, or which is charged with a duty or responsibility under the program, and if the agency is required by law to impose safeguards for the confidentiality of information at least as effective as required under this subsection, then the department shall provide to the requesting agency, with respect to any named individual without regard to paragraph "g", any of the following information:

(1) Whether the individual is receiving or has received benefits, or has made an application for benefits under this chapter.

(2) The period, if any, for which benefits were payable and the weekly benefit amount.

(3) The individual's most recent address.

(4) Whether the individual has refused an offer of employment, and, if so, the date of the refusal and a description of the employment refused, including duties, conditions of employment, and the rate of pay.

(5) The individual's wage information.

e. The department may require an agency which is provided information under this subsection to reimburse the department for the costs of furnishing the information.

f. An employee of the department, an administrative law judge, or a member of the appeal board who violates this subsection is guilty, upon conviction, of a serious misdemeanor.

g. Information subject to the confidentiality of this subsection shall not be directly released to any authorized agency unless an attempt is made to provide written notification to the individual involved. Information released in accordance with criminal investigations by a law enforcement agency of this state, another state, or the federal government is exempt from this requirement.

h. The department and its employees shall not be liable for any acts or omissions resulting from the release of information to any person pursuant to this subsection.

7. *Oaths and witnesses.* In the discharge of the duties imposed by this chapter, the chairperson of the appeal board and any duly authorized representative of the department shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed claim or the administration of this chapter.

8. *Subpoenas.* In case of contumacy by, or refusal to obey a subpoena issued to any person, any court of this state within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the department, or any member or duly authorized representative thereof, shall have jurisdiction to issue to such person an order requiring such person to appear before the department or any member or duly authorized representative thereof to produce evidence if so ordered or to give testimony touching the matter under investigation or in question; any failure to obey such order of the court may be punished by said court as a contempt thereof.

9. *Protection against self-incrimination.* No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the department, or the appeal board, or in obedience to a subpoena in any cause or proceeding provided for in this chapter, on the ground that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty for forfeiture; but no individual shall be prosecuted or subjected to any penalty of forfeiture for or on account of any transaction, matter, or thing concerning which the individual is compelled, after having claimed privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

10. *State-federal cooperation.* In the administration of this chapter, the department shall cooperate with the United States department of labor to the fullest extent consistent with the provisions of this chapter, and shall take such action, through the adoption of appropriate rules, regulations, administrative methods and standards, as may be necessary to secure to this state and its citizens all advantages available under the provisions of the Social Security Act that relate to unemployment compensation, the federal Unemployment Tax Act, the Wagner-Peyser Act, and the

Federal-State Extended Unemployment Compensation Act of 1970.

In the administration of the provisions of section 96.29 which are enacted to conform with the requirements of the Federal-State Extended Unemployment Compensation Act of 1970, the department shall take such action as may be necessary to insure that the provisions are so interpreted and applied as to meet the requirements of such federal Act as interpreted by the United States department of labor, and to secure to this state the full reimbursement of the federal share of extended benefits paid under this chapter that are reimbursable under the federal Act.

The department shall make such reports, in such form and containing such information as the United States department of labor may from time to time require, and shall comply with such provisions as the United States department of labor may from time to time find necessary to assure the correctness and verification of such reports; and shall comply with the regulations prescribed by the United States department of labor governing the expenditures of such sums as may be allotted and paid to this state under Title III of the Social Security Act for the purpose of assisting in administration of this chapter.

The department may make its records relating to the administration of this chapter available to the railroad retirement board, and may furnish the railroad retirement board such copies necessary as the railroad retirement board deems necessary for its purposes. The department may afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment insurance law. The railroad retirement board or any other agency requiring such services and reports from the department shall pay the department such compensation therefor as the department determines to be fair and reasonable.

11. *Destruction of records.* The department may destroy or dispose of such original reports or records as have been properly recorded or summarized in the permanent records of the department and are deemed by the director and the state records commission to be no longer necessary to the proper administration of this chapter. Wage records of the individual worker or transcripts therefrom may be destroyed or disposed of, if approved by the state records commission, two years after the expiration of the period covered by such wage records or upon proof of the death of the worker. Such destruction or disposition shall be made only by order of the director in consultation with the state records commission. Any moneys received from the disposition of such records shall be deposited to the credit of the employment security administration fund, subject to rules promulgated by the department.

12. *Purging uncollectible overpayments.* Notwithstanding any other provision of this chapter,

the department shall review all outstanding overpayments of benefit payments annually. The department may determine as uncollectible and purge from its records any remaining unpaid balances of outstanding overpayments which are ten years or older from the date of the overpayment decision.

13. *Access to available jobs list.* The department shall make available for consultation by the public, at each of the department's offices, a list of current job openings listed with the department, provided that the list shall comply with the confidentiality requirements of subsection 6, or those mandated by the federal government.

14. *Special contractor numbers.* For purposes of contractor registration under chapter 91C, the department shall provide for the issuance of special contractor numbers to contractors for whom employer accounts are not required under this chapter. A contractor who is not in compliance with the requirements of this chapter shall not be issued a special contractor number.

15. *Reimbursement of setoff costs.* The department shall include in the amount set off in accordance with section 421.17, subsection 29, for the collection of an overpayment created pursuant to section 96.3, subsection 7, or section 96.16, subsection 4, an additional amount for the reimbursement of setoff costs incurred by the department of revenue and finance.

2001 Acts, ch 61, §14
Subsection 6, paragraph c, subparagraph (8) stricken and subparagraph (9) renumbered as (8)

96.14 Priority — refunds.

1. *Interest.* Any employer who shall fail to pay any contribution and at the time required by this chapter and the rules of the department shall pay to the department in addition to such contribution, interest thereon at the rate of one percent per month and one-thirtieth of one percent for each day or fraction thereof computed from the date upon which said contribution should have been paid.

2. *Penalties.* Any employer who shall fail to file a report of wages paid to each of the employer's employees for any period in the manner and within the time required by this chapter and the rules of the department or any employer who the department finds has filed an insufficient report and fails to file a sufficient report within thirty days after a written request from the department to do so shall pay a penalty to the department.

The penalty shall become effective with the first day the report is delinquent or, where a report is insufficient, with the thirty-first day following the written request for a sufficient report.

Penalty for failing to file a sufficient report shall be in addition to any penalty incurred for a delinquent report where the delinquent report is also insufficient.

The amount of the penalty for delinquent and

insufficient reports shall be computed based on total wages in the period for which the report was due and shall be computed as follows:

Days Delinquent or Insufficient	Penalty Rate
1 – 60	0.1%
61 – 120	0.2%
121 – 180	0.3%
181 – 240	0.4%
241 or over	0.5%

A penalty shall not be less than ten dollars for the first delinquent report or the first insufficient report not made sufficient within thirty days after a request to do so. The penalty shall not be less than twenty-five dollars for the second delinquent or insufficient report, and not less than fifty dollars for each delinquent or insufficient report thereafter, until four consecutive calendar quarters of reports are timely and sufficiently filed. Interest, penalties, and cost shall be collected by the department in the same manner as provided by this chapter for contributions.

If the department finds that any employer has willfully failed to pay any contribution or part thereof when required by this chapter and the rules of the department, with intent to defraud the department, then such employer shall in addition to such contribution or part thereof, pay a contribution equal to fifty percent of the amount of such contribution or part thereof, as the case may be.

The department may cancel any interest or penalties if it is shown to the satisfaction of the department that the failure to pay a required contribution or to file a required report was not the result of negligence, fraud, or intentional disregard of the law or the rules of the department.

3. *Lien of contributions — collection.* Whenever any employer liable to pay contributions refuses or neglects to pay the same, the amount, including any interest, together with the costs that may accrue in addition thereto, shall be a lien in favor of the state upon all property and rights to property, whether real or personal, belonging to said employer. An assessment of the unpaid contributions, interest and penalty shall be applied as provided in section 96.7, subsection 3, paragraphs "a" and "b", and the lien shall attach as of the date the assessment is mailed or personally served upon the employer and shall continue for ten years, or until the liability for the amount is satisfied, unless sooner released or otherwise discharged. The lien may, within ten years from the date the lien attaches, be extended for up to an additional ten years by filing a notice during the ninth year with the appropriate county official of any county. However, the department may release any lien, when after diligent investigation and effort it determines that the amount due is not collectible.

In order to preserve the aforesaid lien against subsequent mortgagees, purchasers or judgment creditors, for value and without notice of the lien, on any property situated in a county, the department shall file with the recorder of the county, in which said property is located, a notice of said lien.

The county recorder of each county shall prepare and keep in the recorder's office an index to show the following data, under the names of employers, arranged alphabetically:

- a. The name of the employer.
- b. The name "State of Iowa" as claimant.
- c. Time notice of lien was received.
- d. Date of notice.
- e. Amount of lien then due.
- f. When satisfied.

The recorder shall endorse on each notice of lien the day, hour, and minute when received and shall index the notice in the index and shall record the lien in the manner provided for recording real estate mortgages, and the lien shall be effective from the time of the indexing of the lien.

The department shall pay a recording fee as provided in section 331.604, for the recording of the lien, or for its satisfaction.

Upon the payment of contributions as to which the department has filed notice with a county recorder, the department shall forthwith file with said recorder a satisfaction of said contributions and the recorder shall enter said satisfaction on the notice on file in the recorder's office and indicate said fact on the index aforesaid.

The department shall, substantially as provided in this chapter and chapter 626, proceed to collect all contributions as soon as practicable after they become delinquent, except that no property of the employer is exempt from payment of the contributions.

If, after due notice, any employer defaults in any payment of contributions or interest thereon, the amount due may be collected by civil action in the name of the department and the employer adjudged in default shall pay the costs of such action. Civil actions brought under this section to collect contributions or interest thereon from an employer shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this chapter and cases arising under the workers' compensation law of this state.

It is expressly provided that the foregoing remedies of the state shall be cumulative and that no action taken by the department shall be construed to be an election on the part of the state or any of its officers to pursue any remedy hereunder to the exclusion of any other remedy provided by law.

The courts of this state shall recognize and enforce liabilities for unemployment contributions, penalties, interest and benefit overpayments imposed by other states which extend a like comity to this state. The department may sue in the

courts of any other jurisdiction which extends such comity to collect unemployment contributions, penalties, interest and benefit overpayments due this state. The officials of other states which, by statute or otherwise, extend a like comity to this state may sue in the district court to collect for such contributions, penalties, interest and benefit overpayments. In any such case the director, as agent for and on behalf of any other state, may institute and conduct such suit for such other state. Venue of such proceedings shall be the same as for actions to collect delinquent contributions, penalties, interest and benefit overpayments due under this chapter. A certificate by the secretary of any such state attesting the authority of such official to collect the contributions, penalties, interest and benefit overpayments, is conclusive evidence of such authority. The requesting state shall pay the court costs.

If a political subdivision or a political subdivision instrumentality becomes delinquent in the payment of contributions, any payments owed as a government employer, penalty, interest and costs for more than two calendar quarters, the amount of such delinquency shall be deducted from any further moneys due the employer by the state. Such deduction shall be made by the director of revenue and finance upon certification of the amount due. A copy of the certification will be mailed to the employer.

If an amount due from a governmental entity of this state remains due and unpaid for a period of one hundred twenty days after the due date, the director shall take action as necessary to collect the amount and shall levy against any funds due the governmental entity from the state treasurer, director of revenue and finance, or any other official or agency of this state or against an account established by the entity in any bank. The official, agency or bank shall deduct the amount certified by the director from any accounts or deposits or any funds due the delinquent governmental entity without regard to any prior claim and shall promptly forward the amount to the director for the fund. However, the director shall notify the delinquent entity of the director's intent to file a levy by certified mail at least ten days prior to filing the levy on any funds due the entity from any state official or agency.

4. *Priorities under legal dissolutions or distributions.* In the event of any distribution of an employer's assets pursuant to an order of any court under the laws of this state, including any receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceeding, contributions then or thereafter due shall be paid in full prior to all other claims except taxes and claims for wages preferred as provided by statute. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under the federal Bankruptcy Act of 1898, as amended, contributions

then or thereafter due shall be entitled to such priority as is provided in section 64 "a" of that Act [11 U.S.C. § 104 "b", as amended].

5. *Refunds, compromises and settlements.* If the department finds that an employer has paid contributions, interest on contributions, or penalties, which have been erroneously paid or if the employer has overpaid contributions because the employer's contribution rate was subsequently reduced pursuant to section 96.7, subsection 2, paragraph "e", solely due to benefits initially charged against but later removed from an employer's account, and the employer has filed an application for refund, the department shall refund the erroneous payment or overpayment. Refunds so made shall be charged to the fund to which the collections have been credited, and shall be paid to the employer without interest. A claim for refund shall be made within three years from the date of payment. For like cause, refunds, compromises, and settlements may be made by the department on its own initiative within three years of the date of the payment or assessment. If the department finds that the contribution that has been assessed against an employer is of doubtful collectibility or may not be collected in full, the department may institute a proceeding in the district court in the county in which the employer against which the tax is levied is located, requesting authority to compromise the contribution. Notice of the filing of an application shall be given to the interested parties as the court may prescribe. The court upon hearing may authorize the department to compromise and settle its claim for the contribution and shall fix the amount to be received by the department in full settlement of the claim and shall authorize the release of the department's lien for the contribution.

6. *Nonresident employing units.* Any employing unit which is a nonresident of the state of Iowa and for which services are performed in insured work within the state of Iowa and any resident employer for which such services are performed and who thereafter leaves the state of Iowa by having such services performed within the state of Iowa shall be deemed:

a. To agree that such employing unit shall be subject to the jurisdiction of the district court of the state of Iowa over all civil actions and proceedings against such employing unit for all purposes of this chapter, and

b. To appoint the secretary of state of this state as its lawful attorney upon whom may be served all original notices of suit and other legal processes pertaining to such actions and proceedings, and

c. To agree that any original notice of suit or any other legal process so served upon such nonresident employing unit shall be of the same legal force and validity as if personally served on it in this state.

7. *Original notice — form.* The original no-

tice of suit filed with the secretary of state shall be in form and substance the same as now provided in suits against residents of this state, except that the part of the notice pertaining to the return day shall be in substantially the following form:

And unless you appear and defend in the district court of Iowa in and for county at the courthouse in, Iowa, before noon of the sixtieth day following the filing of this notice with the secretary of state of this state, you will be adjudged in default, your default entered of record, and judgment rendered against you for the relief sought in plaintiff's petition.

8. *Manner of service.* Plaintiff in any such action shall cause the original notice of suit to be served as follows:

a. By filing a copy of said original notice of suit with said secretary of state, together with a fee of four dollars, and

b. By mailing to the defendant, and to each of the defendants if more than one, within ten days after said filing with the secretary of state, by restricted certified mail addressed to the defendant at the defendant's last known residence or place of abode, a notification of the said filing with the secretary of state.

9. *Notification to nonresident — form.* The notification, provided for in subsection 7, shall be in substantially the following form, to wit:

To (Here insert the name of each defendant and the defendant's residence or last known place of abode as definitely as known.)

You will take notice that an original notice of suit against you, a copy of which is hereto attached, was duly served upon you at Des Moines, Iowa, by filing a copy of said notice on the day of (month), (year), with the secretary of state of the state of Iowa.

Dated at, Iowa, this day of (month), (year).

.....
Plaintiff.
By
Attorney for Plaintiff.

10. *Optional notification.* In lieu of mailing said notification to the defendant in a foreign state, plaintiff may cause said notification to be personally served in the foreign state on the defendant by any adult person not a party to the suit, by delivering said notification to the defendant or by offering to make such delivery in case defendant refuses to accept delivery.

11. *Proof of service.* Proof of the filing of a copy of said original notice of suit with the secretary of state, and proof of the mailing or personal delivery of said notification to said nonresident shall be made by affidavit of the party doing said acts. All affidavits of service shall be endorsed upon or attached to the originals of the papers to which they relate. All proofs of service, including

the restricted certified mail return receipt, shall be forthwith filed with the clerk of the district court.

12. *Actual service within this state.* The foregoing provisions relative to service of original notice of suit on nonresidents shall not be deemed to prevent actual personal service in this state upon the nonresident in the time, manner, form, and under the conditions provided for service on residents.

13. *Venue of actions.* Actions against nonresidents as contemplated by this law may be brought in Polk county, or in the county in which such services were performed.

14. *Continuances.* The court in which such action is pending shall grant such continuances to a nonresident defendant as may be necessary to afford the defendant reasonable opportunity to defend said action.

15. *Duty of secretary of state.* The secretary of state shall keep a record of all notices of suit filed with the secretary, shall not permit said filed notices to be taken from the secretary's office except on an order of court, and shall, on request, and without fee, furnish any defendant with a certified copy of the notice in which the person is a defendant.

16. *Injunction upon nonpayment.* Any employer or employing unit refusing or failing to make and file required reports or to pay any contributions, interest or penalty under the provisions of this chapter, after ten days' written notice sent by the department to the employer's or employing unit's last known address by certified mail, may be enjoined from operating any business in the state while in violation of this chapter upon the complaint of the department in the district court of a county in which the employer or employing unit has or had a place of business within the state, and any temporary injunction enjoining the continuance of such business may be granted without notice and without a bond being required from the department. Such injunction may enjoin any employer or employing unit from operating a business unit until the delinquent contributions, interest or penalties shall have been made and filed or paid; or the employer shall have furnished a good and sufficient bond conditioned upon the payment of such delinquencies in such an amount and containing such terms as may be determined by the court; or the employer has entered into a plan for the liquidation of such delinquencies as the court may approve, provided that such injunction may be reinstated upon the employer's failure to comply with the terms of said plan.

2001 Acts, ch 44, §3
Subsection 3, unnumbered paragraphs 3 and 4 amended

96.19 Definitions.

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

1. "*Appeal board*" means the employment ap-

peal 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 department may by regulation prescribe.

7. Reserved.

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 workforce development created in section 84A.1.

12. "*Director*" means the director of the department of workforce development 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 department 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.

n. An Indian tribe, subject to the requirements of section 96.7, subsection 9.

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 department. Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of this chapter, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit had actual or constructive knowledge of such work, and provided, further, that such employment was for a to-

tal 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) 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.

(9) A member of a limited liability company. For such a member, the term “*employment*” shall not include any portion of such service that is performed in lieu of making a contribution of cash or property to acquire a membership interest in the limited liability company.

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 connec-

tion 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. (1) 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 department 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.

(2) Services performed by an individual for two or more employing units shall be deemed to be employment to each employing unit for which the services are performed. However, an individual who concurrently performs services as a corporate officer for two or more related corporations and who is paid through a common paymaster that is one of the related corporations may, at the discretion of such related corporations, be considered to

be in the employment of only the common paymaster.

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 department 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 department 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, § 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 cooperative 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.

(8) Services performed by an inmate of a correctional institution.

h. Except as otherwise provided in this subsection, "employment" shall include service performed in the employ of an Indian tribe, subject to the requirements of section 96.7, subsection 9.

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.

25A. “*Indian tribe*” shall have the meaning given to the term pursuant to section 4(e) of the federal Indian Self-Determination and Education Assistance Act, and shall include any subdivision, subsidiary, or business enterprise wholly owned by such an Indian tribe.

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 department 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 department 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 department 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 department, 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 department. 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.

e. Any portion of the remuneration to a member of a limited liability company based on a membership interest in the company provided that the remuneration is allocated among members, and among classes of members, in proportion to their respective investments in the company. If the amount of remuneration attributable to a membership interest cannot be determined, the entire amount of remuneration shall be deemed to be based on services performed.

42. *“Week”* means such period or periods of seven consecutive calendar days ending at midnight, or as the department 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.

2001 Acts, ch 111, §3 - 6
 Subsection 16, NEW paragraph n
 Subsection 18, NEW paragraph h
 NEW subsection 25A

CHAPTER 97A

PUBLIC SAFETY PEACE OFFICERS' RETIREMENT, ACCIDENT, AND DISABILITY SYSTEM

97A.7 Management of funds.

1. The board of trustees shall be the trustees of the several funds created by this chapter as provided in section 97A.8 and shall have full power to invest and reinvest such funds subject to the terms, conditions, limitations and restrictions imposed by subsection 2 of this section, and subject to like terms, conditions, limitations, and restrictions said trustees shall have full power to hold, purchase, sell, assign, transfer, or dispose of any of the securities and investments in which any of the funds created herein shall have been invested, as well as of the proceeds of said investments and any moneys belonging to said funds. The board of trustees may authorize the treasurer of state to exercise any of the duties of this section. When so authorized the treasurer of state shall report any transactions to the board of trustees at its next monthly meeting.

2. The several funds created by this chapter may be invested in any investments authorized for the Iowa public employees' retirement system in section 97B.7, subsection 2, paragraph "b".

3. The treasurer of the state shall be the custodian of the several funds. All payments from said funds shall be made by the treasurer only upon

vouchers signed by two persons designated by the board of trustees. A duly attested copy of the resolution of the board of trustees designating such persons and bearing on its face specimen signatures of such persons shall be filed with the treasurer of state as the treasurer's authority for making payments on such vouchers. No voucher shall be drawn unless it shall previously have been allowed by resolution of the board of trustees.

4. A member of the board of trustees or an employee of the department of personnel shall not have a direct interest in the gains or profits of any investment made by the board of trustees. A trustee shall not receive any pay or emolument for the trustee's services. A trustee or employee of the department of personnel shall not directly or indirectly use the assets of the system except to make current and necessary payments as authorized by the board of trustees, nor shall a trustee or employee of the department of personnel become an endorser or surety or become in any manner an obligor for moneys loaned by or borrowed from the board of trustees.

For future amendment to subsection 2 effective July 1, 2002, see 2001 Acts, ch 68, §6, 24

Section not amended; footnote added

CHAPTER 97B

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM (IPERS)

For provisions affecting administration of the system by new division effective July 1, 2002, and applicability of existing rules, see 2001 Acts, ch 68
Transition benefits advisory committee; report;
2001 Acts, ch 68, §20, 24

97B.1 System created — organizational definitions.

1. The "Iowa Public Employees' Retirement System" is created. The system is within the department of personnel.

2. As used in this chapter unless the context requires otherwise:

a. "Board" means the investment board created by section 97B.8.

b. "Department" means the department of personnel.

c. "Director" means the director of the department of personnel.

d. "System" means the Iowa public employees' retirement system.

For future amendment effective July 1, 2002, see 2001 Acts, ch 68, §7, 24

Section not amended; footnote added

97B.1A 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 with interest plus interest dividends as provided in section 97B.70, 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, compounded as provided in section 97B.70.

2A. "Accumulated employer contributions" means an amount equal to the total obtained as of

any date, by accumulating each individual contribution by the employer for the member with interest plus interest dividends as provided in section 97B.70, 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, compounded as provided in section 97B.70.

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 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. “*Employee*” means an individual who is employed as defined in this chapter for whom coverage under this chapter is mandatory.

a. “*Employee*” shall also include any of the following individuals who do not elect out of coverage under this chapter pursuant to section 97B.42A:

(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. An elective official 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 or by informing the department of the member’s intent to terminate membership for employment as an elective official and establishing that the member has a bona fide termination of employment from all employment covered under this chapter other than as an elective official and that the member has filed a completed application for benefits form with the department. 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) Members of the general assembly of Iowa and temporary employees of the general assembly of Iowa. A member of the general assembly 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 covered under this chapter may terminate membership by sending written notification to the department of their separation from service.

(3) Nonvested employees of drainage and levee districts.

(4) Employees of a community action program determined to be an instrumentality of the state or a political subdivision.

(5) Magistrates.

(6) Members of the ministry, rabbinate, or other religious order who have taken the vow of poverty.

(7) 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.

(8) Members of the state transportation commission, the board of parole, and the state health facilities council.

(9) Employees appointed by the state board of regents who do not elect coverage in a retirement system qualified by the state board of regents that meets the criteria of section 97B.2.

(10) Persons employed by the board of trustees for the statewide fire and police retirement system established in section 411.36.

(11) Persons employed by a municipal water utility or waterworks that has established a pension and annuity retirement system for its employees pursuant to chapter 412.

b. “*Employee*” does not mean the following individuals:

(1) Individuals who are enrolled as students and whose primary occupations are as students who are incidentally employed by employers.

(2) 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.

(3) Employees hired for temporary employment of less than six consecutive months or one thousand forty hours in a calendar year. An employee who works for an employer for six or more consecutive months 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 or a university governed by the state board of regents without a continuing contract, whose teaching load does not

exceed one-half time for two full semesters or three full quarters per calendar year.

(4) Foreign exchange teachers and visitors including alien scholars, trainees, professors, teachers, research assistants, and specialists in their field of specialized knowledge or skill.

(5) 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 184.

(6) Judicial hospitalization referees appointed under section 229.21.

(7) 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.

(8) Persons employed through any program described in section 84A.7 and provided by the Iowa conservation corps.

9. “*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 subsection 8, paragraph “b”, subparagraph (7), 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 functions 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.

10. “*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.

11. “*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.

12. “*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.

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

14. “*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.

14A. “*Member account*” means the account established for each member and includes the member’s accumulated contributions and the member’s share of the accumulated employer contributions as provided in section 97B.53. “*Member account*” does not mean the supplemental account for active members.

15. “*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.

16. “*Prior service*” means any service by an employee rendered at any time prior to July 4, 1953.

17. “*Regular service*” means service for an employer other than special service.

18. “*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.

19. “*Retirement*” means that period of time beginning when a member who has filed an approved application for a retirement allowance has survived into at least the first day of the member’s first month of entitlement and ending when the member dies.

20. “*Service*” means service under this chapter by an employee, except an elected official, for which the employee is paid covered wages. Service shall also mean the following:

a. Service in the armed forces of the United States, if the employee was employed by a covered employer immediately prior to entry into the

armed forces, and if the employee was released from service and returns to covered employment with an employer within twelve months of the date on which the employee has the right of release from service or within a longer period as required by the applicable laws of the United States.

b. Leave of absence authorized by the employer prior to July 1, 1998, for a period not exceeding twelve months and ending no later than July 1, 1999.

c. A leave of absence authorized pursuant to the requirements of the federal Family and Medical Leave Act of 1993, or other similar leave authorized by the employer for a period not to exceed twelve weeks in any calendar year.

d. Temporary or seasonal interruptions in service for employees of a school corporation or educational institution when the temporary suspension of service does not terminate the period of employment of the employee and the employee returns to service at a school corporation or educational institution upon the end of the temporary or seasonal interruption.

21. "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.

22. "Special service" means service for an employer while employed in a protection occupation as provided in section 97B.49B, and as a county sheriff, deputy sheriff, or airport fire fighter as provided in section 97B.49C.

22A. "Supplemental account for active members" or "supplemental account" means the account established for each active member under section 97B.49H.

23. "System" means the retirement plan as contained herein or as duly amended.

24. a. "Three-year average covered wage" means, for a member who retires prior to July 1, 2003, 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. Notwithstanding any other provision of this paragraph to the contrary, a member's wages for the third year as computed by this paragraph shall not exceed, by more than three percent, the member's highest actual calendar year of covered wages for a member whose first month of entitlement is January 1999 or later.

b. Notwithstanding any other provisions of this subsection to the contrary, the three-year average covered wage shall be computed as follows for the following members:

(1) For a member who retires during the calendar year beginning January 1, 1997, and whose three-year average covered wage at the time of retirement exceeds forty-eight thousand dollars, the member's covered wages averaged for the highest four years of the member's service or forty-eight thousand dollars, whichever is greater.

(2) For a member who retires during the calendar year beginning January 1, 1998, and whose three-year average covered wage at the time of retirement exceeds fifty-two thousand dollars, the member's covered wages averaged for the highest five years of the member's service or fifty-two thousand dollars, whichever is greater.

(3) For a member who retires during the calendar year beginning January 1, 1999, and whose three-year average covered wage at the time of retirement exceeds fifty-five thousand dollars, the member's covered wages averaged for the highest six years of the member's service or fifty-five thousand dollars, whichever is greater.

(4) For a member who retires on or after January 1, 2000, but before January 1, 2001, and whose three-year average covered wage at the time of retirement exceeds sixty-five thousand dollars, the member's covered wages averaged for the highest six years of the member's service or sixty-five thousand dollars, whichever is greater.

(5) For a member who retires on or after January 1, 2001, but before January 1, 2002, and whose three-year average covered wage at the time of retirement exceeds seventy-five thousand dollars, the member's covered wages averaged for the highest six years of the member's service or seventy-five thousand dollars, whichever is greater.

For purposes of this paragraph, the highest years of the member's service shall be determined using calendar years and may be determined using one computed year calculated in the manner and subject to the restrictions provided in paragraph "a".

c. "Three-year average covered wage" means, for a member who retires on or after July 1, 2003, the greater of the member's covered wages averaged for a member's highest twelve consecutive

quarters of service or the member's covered wages averaged for a member's highest three calendar years of service. The department shall adopt rules to implement this paragraph in accordance with the requirements of this chapter and the federal Internal Revenue Code.

25. *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.

26. *a.* (1) "Wages" means all remuneration for employment, including, but not limited to, any of the following:

(a) The cash value of wage equivalents not necessitated by the convenience of the employer. The fair market value of such wage equivalents shall be reported to the department by the employer.

(b) The remuneration paid to an employee before employee-paid contributions are made to plans qualified under sections 125, 129, 401, 403, 408, and 457 of the Internal Revenue Code. In addition, "wages" includes amounts that can be received in cash in lieu of employer-paid contributions to such plans, if the election is uniformly available and is not limited to highly compensated employees, as defined in section 414(q) of the Internal Revenue Code.

(c) For an elected official, other than a member of the general assembly, the total compensation received by the elected official, whether paid in the form of per diem or annual salary, exclusive of expense and travel allowances.

(d) For a member of the general assembly, 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 subparagraph subdivision. 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.

(e) Payments for compensatory time earned that are received in lieu of taking regular work hours off and when paid as a lump sum. However, "wages" does not include payments made in a lump sum for compensatory time earned in excess of two hundred forty hours per year.

(f) Employee contributions required under section 97B.11 and picked up by the employer under section 97B.11A.

(2) "Wages" does not include any of the following:

(a) The cash value of wage equivalents necessitated by the convenience of the employer.

(b) Payments made for accrued sick leave or accrued vacation leave that are not being used to replace regular work hours, whether paid in a lump sum or in installments.

(c) Payments made as an incentive for early retirement or as payment made upon dismissal or severance from employment, or a special bonus payment intended as an early retirement incentive, whether paid in a lump sum or in installments.

(d) Employer-paid contributions that cannot be received by the employee in cash and that are made to, and any distributions from, plans, programs, or arrangements qualified under section 117, 120, 125, 129, 401, 403, 408, or 457 of the Internal Revenue Code.

(e) Employer-paid contributions for coverage under, or distributions from, an accident, health, or life insurance plan, program, or arrangement.

(f) Workers' compensation and unemployment compensation payments.

(g) Disability payments.

(h) Reimbursements of employee business expenses except for those expenses included as wages for a member of the general assembly.

(i) Payments for allowances made to an employee that are not included in an employee's federal taxable income except for those allowances included as wages for a member of the general assembly.

(j) Payments of damages, attorney fees, interest, and penalties made to satisfy a grievance or wage claim.

(k) Payments for services as an independent contractor.

(l) Payments made by an entity that is not an employer under this chapter.

(m) Payments made in lieu of any employer-group insurance coverage.

(n) Payments made for the difference between the costs of single and family insurance coverage.

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) For the calendar year beginning January 1, 1991, wages not in excess of thirty-one thousand dollars.

(12) For the calendar year beginning January 1, 1992, wages not in excess of thirty-four thousand dollars.

(13) For the calendar year beginning January 1, 1993, wages not in excess of thirty-five thousand dollars.

(14) For the calendar year beginning January 1, 1994, wages not in excess of thirty-eight thousand dollars.

(15) For the calendar year beginning January 1, 1995, wages not in excess of forty-one thousand dollars.

(16) For the calendar year beginning January 1, 1996, wages not in excess of forty-four thousand dollars.

(17) Commencing with the calendar year beginning January 1, 1997, and for each subsequent calendar year, wages not in excess of the amount

permitted for that year under section 401(a)(17) of the Internal Revenue Code.

Notwithstanding any other provision of this chapter providing for the payment of the benefits provided in section 97B.49B, 97B.49C, 97B.49D, or 97B.49G, the department shall establish the covered wages limitation which applies to members covered under section 97B.49B, 97B.49C, 97B.49D, or 97B.49G, at the same level as is established under this subparagraph for other members of the system.

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.

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 lettered 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.

27. “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.

2001 Acts, ch 61, §15

Inclusion in definition of wages of certain allowable employer-paid contributions paid by eligible employers to eligible employees; 2000 Acts, ch 1171, §26

Subsection 8, paragraph a, subparagraph (6) stricken and subparagraphs (7) – (12) renumbered as (6) – (11)

97B.3 Reserved.

For future text of this section effective July 1, 2002, see 2001 Acts, ch 68, §§, 24

97B.4 Administration of system — powers and duties — immunity.

The department, through the chief investment officer and chief benefits officer, shall administer this chapter. The department may adopt, amend, or rescind rules, employ persons, execute contracts with outside parties, make expenditures, require reports, make investigations, and take other action it deems necessary for the administration of the system in conformity with the requirements of this chapter, the applicable provisions of the Internal Revenue Code, and all other applicable federal and state laws. The rules shall be effective upon compliance with chapter 17A. Not later than the fifteenth day of December of each year, the department shall submit to the governor a report covering the administration and op-

eration of this chapter during the preceding fiscal year and shall make recommendations for amendments to this chapter. The report shall include a balance sheet of the moneys in the Iowa public employees' retirement fund.

In the administration of the investment of moneys in the fund, employees of the department and members of the board may travel outside the state for the purpose of meeting with investment firms and consultants and attending conferences and meetings to fulfill their fiduciary responsibilities. This travel is not subject to section 421.38, subsection 2.

The department, members of the investment board, and the treasurer of state are not personally liable for actions or omissions under this chapter that do not involve malicious or wanton misconduct even if those actions or omissions violate the standards established in section 97B.7.

For future amendment effective July 1, 2002, see 2001 Acts, ch 68, §9, 24

Section not amended; footnote added

97B.5 Staff.

Subject to other provisions of this chapter, the department may employ personnel as necessary for the administration of the system, including but not limited to a chief investment officer and a chief benefits officer. The maximum number of full-time equivalent employees specified by the general assembly for the department for administration of the system for a fiscal year shall not be reduced by any authority other than the general assembly. The staff shall be appointed pursuant to chapter 19A. The department shall not appoint or employ a person who is an officer or committee member of a political party organization or who holds or is a candidate for a partisan elective public office. The department may employ attorneys and contract with attorneys and legal firms for the provision of legal counsel and advice in the administration of this chapter and chapter 97C. The department may execute contracts with investment advisors, consultants, and managers outside state government in the administration of this chapter. The department may delegate to any person such authority as it deems reasonable and proper for the effective administration of this chapter, and may bond any person handling moneys or signing checks under this chapter.

For future repeal of this section effective July 1, 2002, see 2001 Acts, ch 68, §23, 24

Section not amended; footnote added

97B.6 Old records.

The department may destroy or dispose of such original reports or records as have been properly recorded or summarized in the permanent records of the department and are deemed by the director to be no longer necessary to the proper administration of this chapter. The destruction or disposition shall be made only by order of the director. Rec-

ords of deceased members of the system may be destroyed ten years after the later of the final payment made to a third party on behalf of the member or the death of the member. Any moneys received from the disposition of these records shall be deposited to the credit of the public employees' retirement fund subject to rules adopted by the department.

For future repeal of this section effective July 1, 2002, see 2001 Acts, ch 68, §23, 24

Section not amended; footnote added

97B.7 Fund created — trustee's duties — investments.

1. There is hereby created as a special fund, separate and apart from all other public moneys or funds of this state, the "*Iowa Public Employees' Retirement Fund*", hereafter called the "*retirement fund*". This fund shall consist of all moneys collected under this chapter, together with all interest, dividends and rents thereon, and shall also include all securities or investment income and other assets acquired by and through the use of the moneys belonging to this fund and any other moneys that have been paid into this fund.

2. The treasurer of the state of Iowa is hereby made the custodian and trustee of this fund and shall administer the same in accordance with the directions of the department. It shall be the duty of the trustee:

a. To hold said trust funds.

b. To invest the portion of the retirement fund which in the judgment of the department is not needed for current payment of benefits under this chapter. The department shall execute the disposition and investment of moneys in the retirement fund in accordance with the investment policy and goal statement established by the investment board. In establishing the investment policy of the fund and the investment of the fund, the department and investment board shall exercise the judgment and care, under the circumstances then prevailing, which persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not for the purpose of speculation, but with regard to the permanent disposition of the funds, considering the probable income, as well as the probable safety, of their capital. Within the limitations of the standard prescribed in this section, the treasurer of state, the department, and the board may acquire and retain every kind of property and every kind of investment which persons of prudence, discretion, and intelligence acquire or retain for their own account.

The department and investment board shall give appropriate consideration to those facts and circumstances that the department and investment board know or should know are relevant to the particular investment or investment policy involved, including the role the investment plays in the total value of the retirement fund.

For the purposes of this paragraph, appropriate consideration includes, but is not limited to, a determination by the department and investment board that the particular investment or investment policy is reasonably designed to further the purposes of the retirement system, taking into consideration the risk of loss and the opportunity for gain or other return associated with the investment or investment policy and consideration of the following factors as they relate to the retirement fund:

(1) The composition of the retirement fund with regard to diversification.

(2) The liquidity and current return of the investments in the fund relative to the anticipated cash flow requirements of the retirement system.

(3) The projected return of the investments relative to the funding objectives of the retirement system.

Consistent with this paragraph, investments made under this paragraph shall be made in a manner that will enhance the economy of this state, and in particular, will result in increased employment of the residents of this state. Investments of moneys in the fund are not subject to sections 73.15 through 73.21.

Except as provided in section 97B.4, if there is loss to the fund, the treasurer, the department, and the board are not personally liable, and the loss shall be charged against the retirement fund. There is appropriated from the retirement fund the amount required to cover a loss. Expenses incurred in the sale and purchase of securities belonging to the retirement fund shall be charged to the retirement fund, and there is appropriated from the retirement fund the amount required for the expenses incurred. Investment management expenses shall be charged to the investment income of the retirement fund, and there is appropriated from the retirement fund the amount required for the investment management expenses, subject to the limitations stated in this unnumbered paragraph. The amount appropriated for a fiscal year under this unnumbered paragraph shall not exceed four-tenths of one percent of the market value of the retirement fund. The department shall report the investment management expenses for a fiscal year as a percent of the market value of the retirement fund in the annual report to the governor required in section 97B.4. A person who has signed a contract with the department for investment management purposes shall meet the requirements for doing business in Iowa sufficient to be subject to tax under rules of the department of revenue and finance.

c. To disburse such trust funds upon warrants drawn by the director of revenue and finance pursuant to the order of the department.

d. To sell any securities or other property in the trust fund and reinvest the proceeds in accordance with the direction of the department when

such action may be deemed advisable by the department for the protection of the trust fund or the preservation of the value of the investment. Such sale of securities or other property of the trust fund shall only be made after advice from the investment board in the manner and to the extent provided in this chapter in regard to the purchase of investments.

e. To subscribe, in accordance with the direction of the department, for the purchase of securities for future delivery in anticipation of future income. Such securities shall be paid for by such anticipated income or from funds from the sale of securities or other property held by the fund.

f. To pay for securities directed to be purchased by the department on the receipt of the purchasing bank's paid statement or paid confirmation of purchase.

3. All moneys which are paid or deposited into this fund are appropriated and made available to the department to be used for the exclusive benefit of the members and their beneficiaries or contingent annuitants as provided in this chapter:

a. To be used by the department for the payment of retirement claims for benefits under this chapter.

b. To be used by the department to pay refunds provided for in this chapter.

c. To be used for the costs of administering the retirement system. If as a result of action under section 8.31, the governor has reduced the moneys appropriated from the Iowa public employees' retirement system fund to the department of personnel for salaries, support, maintenance, and other operational purposes to pay the costs of the Iowa public employees' retirement system for a fiscal year, it is the intent of the general assembly that the amount by which the appropriation has been reduced should be transferred from that fund to the department of personnel for salaries, support, maintenance, and other operational purposes to pay the costs of the Iowa public employees' retirement system for that fiscal year.

For future amendment effective July 1, 2002, see 2001 Acts, ch 68, §10, 24

Section not amended; footnote added

97B.7A Reserved.

For future text of this section effective July 1, 2002, see 2001 Acts, ch 68, §11, 24

97B.8 Investment board.

A board is established to be known as the "Investment Board of the Iowa Public Employees' Retirement System", referred to in this chapter as the "board", whose duties are to establish policy for the department in matters relating to the investment of the trust funds of the Iowa public employees' retirement system. At least annually the board shall review the investment policies and procedures used by the department under section 97B.7, subsection 2, paragraph "b", and shall hold

a public meeting on the investment policies and investment performance of the fund. Following its review and the public meeting, the board shall establish an investment policy and goal statement which shall direct the investment activities of the department. The development of the investment policy and goal statement and its subsequent execution shall be performed cooperatively between the board and the department. In addition to the reasons provided in section 21.5, subsection 1, the board may hold a closed session pursuant to the requirements of section 21.5 of that portion of an investment board meeting in which financial or commercial information is provided to or discussed by the board if the board determines that disclosure of such information could result in a loss to the system or to the provider of the information.

The board consists of nine members. Six of the members shall be appointed by the governor. One member shall be an executive of a domestic life insurance company, one an executive of a state or national bank operating within the state of Iowa, one an executive of an industrial corporation located within the state of Iowa, and three shall be members of the system, one of whom is an active member who is an employee of a school district, area education agency, or merged area, one of whom is an active member who is not an employee of a school district, area education agency, or merged area, and one of whom is a retired member of the system. The president of the senate, after consultation with the majority leader and the minority leader of the senate, shall appoint one member from the membership of the senate and the speaker of the house of representatives shall appoint one member from the membership of the house. The two members appointed by the president of the senate, after consultation with the majority leader and the minority leader of the senate, and the speaker of the house of representatives and the two active members of the system appointed by the governor are ex officio members of the board. The director of the department of personnel is an ex officio, nonvoting member of the board. Five voting members of the board shall constitute a quorum.

The members who are executives of a domestic life insurance company, a state or national bank, and a major industrial corporation, and the member who is a retired member of the system, shall be paid their actual expenses incurred in performance of their duties and shall receive a per diem as specified in section 7E.6 for each day of service not exceeding forty days per year. Legislative members shall be paid the per diem specified in section 2.10, subsection 5, for each day of service, and their actual expenses incurred in the performance of their duties. The per diem and expenses of the legislative members shall be paid from funds appropriated under section 2.12. The members who are active members of the system and the director of the department shall be paid their actu-

al expenses incurred in the performance of their duties as members of the board and performance of their duties as members of the board shall not affect their salaries, vacations, or leaves of absence for sickness or injury. The appointive terms of the members appointed by the governor are for a period of six years beginning and ending as provided in section 69.19. If there is a vacancy in the membership of the board, the governor has the power of appointment. Appointees to this board are subject to confirmation by the senate.

For section repeal and new investment board creation effective July 1, 2002, and transition provisions, see 2001 Acts, ch 68, §12, 19, 23, 24
Section not amended; footnote added

97B.8A and 97B.8B Reserved.

For future text of these sections effective July 1, 2002, see 2001 Acts, ch 68, §12, 13, 24

97B.17 Printed in Addendum.

97B.20A Appeal procedure.

Members and third-party payees may appeal any decision made by the department that affects their rights under this chapter. The appeal shall be filed with the department within thirty days after the notification of the decision was mailed to the party's last known mailing address, or the decision of the department is final. If the party appeals the decision of the department, the department shall conduct an internal review of the decision and the chief benefits officer shall notify the individual who has filed the appeal in writing of the department's decision. The individual who has filed the appeal may file an appeal of the department's final decision with the department under chapter 17A by notifying the department of the appeal in writing within thirty days after the notification of its final decision was mailed to the party's last known mailing address. Once notified, the department shall forward the appeal to the department of inspections and appeals.

For future amendment effective July 1, 2002, see 2001 Acts, ch 68, §14, 24

Section not amended; footnote added

97B.25 Applications for benefits.

A representative designated by the chief benefits officer and referred to in this chapter as a retirement benefits officer shall promptly examine applications for retirement benefits and on the basis of facts found shall determine whether or not the claim is valid. If the claim is valid, the retirement benefits officer shall send a notification to the member stating the option the member has selected pursuant to section 97B.51, the month with respect to which benefits shall commence, and the monthly benefit amount payable. If the claim is invalid, the retirement benefits officer shall promptly notify the applicant and any other interested party of the decision and the reasons. A retirement application shall not be amended or revoked by the member once the first retirement allowance is paid. A member's death during the first

month of entitlement shall not invalidate an approved application.

For future amendment effective July 1, 2002, see 2001 Acts, ch 68, §15, 24

Section not amended; footnote added

97B.42A Optional exclusion from membership.

1. Commencing January 1, 1999, a person who is newly hired in a position as an employee, as defined in section 97B.1A, subsection 8, paragraph “a”, shall be covered under this chapter unless the person files an application with appropriate documentation to the department within sixty days of employment in the position to affirmatively elect out of coverage. A decision to elect out of coverage under this chapter is irrevocable upon approval from the system.

2. If a person elects out of coverage pursuant to this section, the period of time from the date on which the person was newly hired until the date the person’s election out of coverage is effective shall not constitute service for purposes of coverage under this chapter. In addition, a wage adjustment shall be processed for the person based on any contributions collected pursuant to this chapter during that period of time and shall be credited pursuant to section 97B.10.

3. A person who is employed in a position as an employee as defined in section 97B.1A, subsection 8, paragraph “a”, on January 1, 1999, and who has not elected coverage under this chapter prior to that date and is not an active member of another retirement system in the state which is maintained in whole or in part by public contributions or payments, shall begin coverage under the system on January 1, 1999, unless the person files an application with appropriate documentation with the department to elect out of coverage on or before January 1, 2000. If a person elects out of coverage, the period of time from January 1, 1999, until the date the person’s election out of coverage is effective shall not constitute service for purposes of coverage under this chapter and a wage adjustment shall be processed for the person based on any contributions collected pursuant to this chapter during that period of time and shall be credited pursuant to section 97B.10. A decision to elect out of coverage under this chapter pursuant to this section is irrevocable upon approval from the department.

4. A person who becomes a member of the system pursuant to subsection 3, or who is a member of the system, and who has one or more years of covered wages, may purchase credit, pursuant to section 97B.73, for one or more quarters of service prior to January 1, 1999, in which the person was employed in a position as described in section 97B.1A, subsection 8, paragraph “a”, but was not a member of the system.

5. A person who is employed in a position as an employee as defined in section 97B.1A, subsection

8, paragraph “a”, subparagraph (11), on July 1, 2000, and who has not elected out of coverage under this chapter prior to that date, shall begin coverage under the system on July 1, 2000, unless, on or before August 31, 2000, the person files an application with appropriate documentation to elect coverage under an alternative pension and annuity retirement system established pursuant to chapter 412. If a person elects coverage under the alternative pension and annuity retirement system, the period of time from July 1, 2000, until the date the person’s election of coverage is effective shall not constitute service for purposes of coverage under this chapter and a wage adjustment shall be processed for the person based on any contributions collected pursuant to this chapter during that period of time and shall be credited pursuant to section 97B.10. A decision to elect coverage under an alternative pension and annuity retirement system established pursuant to chapter 412 under this subsection is irrevocable upon approval from the department.

A person who becomes a member of the Iowa public employees’ retirement system pursuant to this subsection, and who has one or more years of covered wages, may purchase credit, pursuant to section 97B.73, for one or more quarters of service prior to August 1, 2000, in which the person was employed in a position as described by section 97B.1A, subsection 8, paragraph “a”, subparagraph (11), but was not a member of the system.

Section not amended; internal reference change applied

97B.57 Distribution of information.

The department shall prepare and distribute to the employees, at the expense of the retirement fund and in such a manner as it shall deem appropriate, information concerning the retirement system.

The information provided under this section shall include information on the investment policies and investment performance of the retirement fund. In providing this information, to the extent possible, the department shall include the total investment return for the entire fund, for portions of the fund managed by investment managers, and for internally managed portions of the fund, and the cost of managing the fund per thousand dollars of assets. The performance shall be based upon market as well as book value, and shall be contrasted with relevant market indices and with performances of pension funds with similar investment policies and characteristics. This information shall be prepared and available to employees at least on an annual basis.

For future repeal of this section effective July 1, 2002, see 2001 Acts, ch 68, §23, 24

Section not amended; footnote added

97B.59 Actuary employed.

The department shall employ an actuary as its technical advisor. The compensation of the actuary and of other employees shall be fixed by the de-

partment within the appropriations made therefor.

For future repeal of this section effective July 1, 2002, see 2001 Acts, ch 68, §23, 24

Section not amended; footnote added

97B.60 Actuarial investigation.

During calendar year 2002, and every four years thereafter, the department shall cause an actuarial investigation to be made of all experience under the retirement system. Pursuant to such an investigation, the department shall, from time to time, determine upon an actuarial basis the condition of the system and shall report to the general assembly its findings and recommendations. The department shall adopt from time to time mortality tables and all other necessary factors for use in all actuarial calculations required in connection with the retirement system.

For future repeal of this section effective July 1, 2002, see 2001 Acts, ch 68, §23, 24

Section not amended; footnote added

97B.61 Annual valuation of assets.

The department shall cause an annual actuarial valuation to be made of the assets and liabilities of the retirement system and shall prepare an annual statement of the amounts to be contributed by the employer under this chapter, and shall publish annually such valuation of the assets and liabilities and the statement of receipts and disbursements of the retirement system.

After accepting the actuarial methods and assumptions of the valuation, the department shall certify to the governor the contribution rates determined thereby as the rates necessary and sufficient for members and employers to fully fund the benefits and retirement allowances being credited.

For future repeal of this section effective July 1, 2002, see 2001 Acts, ch 68, §23, 24

Section not amended; footnote added

CHAPTER 99D

PARI-MUTUEL WAGERING

99D.20 Audit of licensee operations.

Within ninety days after the end of each race meet, the licensee shall transmit to the commission an audit of the financial transactions and condition of the licensee's operations conducted under this chapter. Additionally, within ninety days after the end of the licensee's fiscal year, the licensee shall transmit to the commission an audit of the financial transactions and condition of the licensee's total operations. All audits shall be conducted by certified public accountants registered in the state of Iowa under chapter 542C.

For future amendment to this section effective July 1, 2002, see 2001 Acts, ch 55, §21, 38

Section not amended; footnote added

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. The department shall pay

the amount deposited in the fund that is withheld from the purse won by an Iowa-foaled horse to the breeder of the winning Iowa-foaled horse by December 31 of each calendar year. The department shall pay the amount deposited in the fund that is withheld from the purse won by an Iowa-whelped dog to the breeder of the winning Iowa-whelped dog by March 31 of each calendar year. For the purposes of this section, the breeder of a horse shall be considered to be the owner of the brood mare at the time the foal is dropped.

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.

2001 Acts, ch 129, §2
Subsection 1 amended

CHAPTER 99E

IOWA LOTTERY

99E.10 Allocation and appropriation of funds generated.

1. Upon receipt of any revenue, the commissioner shall deposit the moneys in the lottery fund created pursuant to section 99E.20. As nearly as is practicable, at least fifty percent of the projected annual revenue, after deduction of the amount of the sales tax, accruing from the sale of tickets or shares is appropriated for payment of prizes to the holders of winning tickets. After the payment of prizes, all of the following shall be deducted from lottery revenue prior to disbursement:

a. An amount equal to three-tenths of one percent of the gross lottery revenue shall be deposited in a gambling treatment fund in the office of the treasurer of state.

b. An amount equal to the product of the state sales tax rate under section 422.43 multiplied by the gross sales price of each ticket or share sold shall be deducted as the sales tax on the sale of that ticket or share, remitted to the treasurer of state and deposited into the state general fund.

c. The expenses of conducting the lottery including the reasonable expenses incurred by the attorney general's office in enforcing this chapter.

d. The contractual expenses required in this paragraph. The division of criminal investigation shall be the primary state agency responsible for investigating criminal violations of the law under this chapter. The commissioner shall contract

with the department of public safety for investigative services, including the employment of special agents and support personnel, and procurement of necessary equipment to carry out the responsibilities of the division of criminal investigation under the terms of the agreement and this chapter.

e. For the fiscal year beginning July 1, 1993, after the first thirty-three million dollars is transferred to the general fund of the state, five hundred thousand dollars shall be deposited in the Iowa state fair foundation in the office of the treasurer of state to be used by the foundation fund for capital projects or major maintenance improvements at the Iowa state fairgrounds. For the fiscal period beginning July 1, 1994, and ending June 30, 1996, five hundred thousand dollars shall annually be deposited in the Iowa state fair foundation fund in the office of the treasurer of state to be used by the foundation for capital projects or major maintenance improvements at the Iowa state fairgrounds. Matching funds from other sources shall not be required for expenditure of funds deposited pursuant to this subsection.

Lottery expenses for marketing, educational, and informational material shall not exceed four percent of the lottery revenue.

Lottery revenue remaining after expenses are determined shall be transferred to the general fund of the state on a monthly basis. However, upon the request of the director and subject to ap-

proval by the treasurer of state, an amount sufficient to cover the foreseeable administrative expenses of the lottery for a period of twenty-one days may be retained from the lottery revenue. Prior to the monthly transfer to the general fund of the state, the director may direct that lottery revenue shall be deposited in the lottery fund and in interest-bearing accounts designated by the treasurer of state in the financial institutions of this state or invested in the manner provided in section 12B.10. Interest or earnings paid on the deposits or investments is considered lottery revenue and shall be transferred to the general fund of the state in the same manner as other lottery revenue.

2. The director of management shall not include lottery revenues in the director's fiscal year revenue estimates.

3. *a.* Notwithstanding subsection 1, if gaming revenues under sections 99D.17 and 99F.11 are insufficient in a fiscal year to meet the total amount of such revenues directed to be deposited in the vi-

sion Iowa fund and the school infrastructure fund during the fiscal year pursuant to section 8.57, subsection 5, paragraph "e", the difference shall be paid from lottery revenues prior to deposit of the lottery revenues in the general fund. If lottery revenues are insufficient during the fiscal year to pay the difference, the remaining difference shall be paid from lottery revenues in subsequent fiscal years as such revenues become available.

b. The treasurer of state shall, each quarter, prepare an estimate of the gaming revenues and lottery revenues that will become available during the remainder of the appropriate fiscal year for the purposes described in paragraph "a". The department of management and the department of revenue and finance shall take appropriate actions to provide that the amount of gaming revenues and lottery revenues that will be available during the remainder of the appropriate fiscal year is sufficient to cover any anticipated deficiencies.

2001 Acts, ch 185, §44, 49
NEW subsection 3

CHAPTER 99F

GAMBLING — EXCURSION BOATS AND RACETRACKS

99F.13 Annual audit of licensee operations.

Within ninety days after the end of the licensee's fiscal year, the licensee shall transmit to the commission an audit of the financial transactions and condition of the licensee's total operations. All au-

ditions shall be conducted by certified public accountants registered or licensed in the state of Iowa under chapter 542C.

For future amendment to this section effective July 1, 2002, see 2001 Acts, ch 55, §22, 38
Section not amended; footnote added

CHAPTER 103A

STATE BUILDING CODE

103A.3 Definitions.

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

1. "Board of review" or "board" means the state building code board of review created by this chapter.

2. "Building" means a combination of any materials, whether portable or fixed, to form a structure affording facilities or shelter for persons, animals or property. The word "building" includes any part of a building unless the context clearly requires a different meaning.

3. "Building regulations" means any law, by-law, rule, resolution, regulation, ordinance, or code or compilation enacted or adopted, by the state or any governmental subdivision, including departments, boards, bureaus, commissions or other agencies, relating to the construction, reconstruction, alteration, conversion, repair or use of

buildings and installation of equipment therein. The term shall not include zoning ordinances or subdivision regulations.

4. "Commissioner" means the state building code commissioner created by this chapter.

5. "Construction" means the construction, erection, reconstruction, alteration, conversion, repair, equipping of buildings, structures or facilities, and requirements or standards relating to or affecting materials used in connection therewith, including provisions for safety and sanitary conditions.

6. "Council" means the state building code advisory council created by this chapter.

7. "Equipment" means plumbing, heating, electrical, ventilating, conditioning, refrigerating equipment, elevators, dumbwaiters, escalators, and other mechanical facilities or installations.

8. "Factory-built structure" means any struc-

ture which is, wholly or in substantial part, made, fabricated, formed, or assembled in manufacturing facilities for installation, or assembly and installation, on a building site. “*Factory-built structure*” includes the terms “*mobile home*”, “*manufactured home*”, and “*modular home*”.

9. “*Governmental subdivision*” means any city, county, or combination thereof.

10. “*Ground anchoring system*” means any device or combination of devices used to securely anchor a manufactured or mobile home to the ground.

11. “*Ground support system*” means any device or combination of devices placed beneath a manufactured or mobile home and used to provide support.

12. “*Installation*” means the assembly of factory-built structures on site and the process of affixing factory-built structures to land, a foundation, footings, or an existing building.

13. “*Local building department*” means an agency of any governmental subdivision charged with the administration, supervision, or enforcement of building regulations, approval of plans, inspection of buildings, or the issuance of permits, licenses, certificates and similar documents, prescribed or required by state or local building regulations.

14. “*Local building regulations*” means building regulations adopted by a governmental subdivision.

15. “*Manufacture*” is the process of making, fabricating, constructing, forming, or assembling a product from raw, unfinished, or semi-finished materials.

16. “*Manufactured home*”, “*mobile home*”, and “*modular home*” mean the same as defined in section 435.1.

17. “*New construction*” means construction of buildings and factory-built structures which is commenced on or after January 1, 1978. Notwithstanding the definition in subsection 5 of this section, when the term “*new construction*” appears in this chapter, “*construction*” is limited to the erection, reconstruction or conversion of a building or factory-built structure and additions to buildings or factory-built structures and does not include renovations or repairs.

18. “*Out-of-state contractor*” means a person whose principal place of business is in another state, and which contracts to perform construction, installation, or any other work covered by this chapter, in this state.

19. “*Owner*” means the owner of the premises, a mortgagee or vendee in possession, an assignee of rents, or a receiver, executor, trustee, lessee or other person in control of a building or structure.

20. “*Performance objective*” establishes design and engineering criteria without reference to specific methods of construction.

21. “*Permanent site*” means any lot or parcel of land on which a manufactured or mobile home

used as a dwelling or place of business is located for ninety consecutive days, except a construction site when the manufactured or mobile home is used by a commercial contractor as a construction office or storage room.

22. “*State agency*” means a state department, board, bureau, commission, or agency of the state of Iowa.

23. “*State building code*” or “*code*” means the state building code provided for in section 103A.7.

24. “*State historic building code*” means the alternative building regulations and building standards for certain historic buildings provided for in section 103A.41.

25. “*Structure*” means that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner except transmission and distribution structures of public utilities. The word “*structure*” includes any part of a structure unless the context clearly requires a different meaning.

26. “*Tiedown system*” means a ground support system and a ground anchoring system used in concert to provide anchoring and support for a manufactured or mobile home.

2001 Acts, ch 100, §1, 2; 2001 Acts, ch 176, §60, 82

Subsections 8, 10, and 11 amended

NEW subsection 16 and former subsections 16 – 25 renumbered as 17

– 26

Subsections 21 and 26 amended

103A.9 Factory-built structures.

The state building code shall contain provisions relating to the manufacture and installation of factory-built structures.

1. Factory-built structures manufactured in Iowa, after the effective date of the code, shall be manufactured in accordance with the code, unless the commissioner determines the structure is manufactured for installation outside the state.

2. Factory-built structures manufactured outside the state of Iowa, after the effective date of the code, and brought into Iowa for installation must, prior to installation, comply with the code.

3. Factory-built structures manufactured prior to the effective date of the code, which prior to that date have never been installed, must comply with the code prior to installation.

4. All factory-built structures, without regard to manufacture date, shall be installed in accordance with the code in the governmental subdivisions which have adopted the state building code or any other building code. However, a governmental subdivision shall not require that a factory-built structure, that was manufactured in accordance with federally mandated standards, be renovated in accordance with the state building code or any other building code which the governmental subdivision has adopted when the factory-built structure is being moved from one lawful location to another unless such required renovation is in conformity with those specifications for

the factory-built structure which existed when it was manufactured or the factory-built structure is being rented for occupancy.

Existing factory-built structures not constructed to be in compliance with federally mandated standards may be moved from one established manufactured home community or mobile home park to another and shall not be required to be renovated to comply with the state building code or any other building code which the governmental subdivision has adopted unless the factory-built structure is being rented for occupancy or has been declared a public nuisance according to standards generally applied to housing.

5. Factory-built structures required to comply with the code provisions on manufacture, shall not be modified in any way prior to or during installation, unless prior approval is obtained from the commissioner.

6. The commissioner shall establish an insignia of approval and provide that factory-built structures required to comply with code provisions on manufacture bear an insignia of approval prior to installation. The insignia may be issued for other factory-built structures which meet code standards and which were manufactured prior to the effective date of the state building code.

7. The commissioner may contract with local government agencies for enforcement of the code relating to manufacture of factory-built structures. Code provisions relating to installation of factory-built structures shall be enforced by the local building departments only in those governmental subdivisions which have adopted the state building code or any other building code.

2001 Acts, ch 100, §3; 2001 Acts, ch 153, §16
Subsection 4 amended

103A.12 Adoption and withdrawal — procedure.

The state building code is applicable in each governmental subdivision of the state in which the governing body has enacted an ordinance accepting the applicability of the code and has filed a certified copy of the ordinance in the office of the commissioner. The state building code becomes effective in the governmental subdivision upon the date fixed by the governmental subdivision ordinance, which must not be more than six months after the date of adoption of the ordinance.

A governmental subdivision in which the state building code is applicable may by ordinance, at any time after one year has elapsed since the code became applicable, withdraw from the application of the code. The local governing body shall hold a public hearing, after giving not less than four but not more than twenty days' public notice, together with written notice to the commissioner of the time, place, and purpose of the hearing, before the ordinance to withdraw is voted upon. A certified copy of the vote of the local governing body shall be

transmitted within ten days after the vote is taken to the commissioner. The ordinance becomes effective at a time to be specified in the ordinance, which must be not less than one hundred eighty days after the date of adoption. Upon the effective date of the ordinance, the state building code ceases to apply to the governmental subdivision except that construction of a building or structure pursuant to a permit previously issued is not affected by the withdrawal.

A governmental subdivision which has withdrawn from the application of the state building code may, at any time thereafter, restore the application of the code in the same manner as specified in this section.

2001 Acts, ch 20, §1
Section amended

103A.26 Manufactured or mobile home installers certification — violation — civil penalty.

1. *a.* A person who installs a manufactured or mobile home for another person shall be certified in accordance with rules adopted by the commissioner pursuant to chapter 17A. The commissioner may assess a fee sufficient to recover the costs of administering the certification of manufactured or mobile home installers. The commissioner may suspend or revoke the certification of a manufactured or mobile home installer for failure to perform installation of a manufactured or mobile home, pursuant to certification standards as provided by rules of the commissioner.

b. Notwithstanding section 103A.23, all fees collected by the commissioner for the administration of the manufactured or mobile home program shall be credited to the general fund of the state and are appropriated to the commissioner for the purpose of administering this certification program including the employment of personnel for the enforcement and administration of this program.

2. If a provision of this chapter or a rule adopted pursuant to this chapter relating to the manufacture or installation of a manufactured or mobile home is violated, the commissioner may assess a civil penalty not to exceed one thousand dollars for each offense. Each violation involving a separate manufactured or mobile home, or a separate failure or refusal to allow an act to be performed or to perform an act as required by this chapter or a rule adopted pursuant to this chapter, constitutes a separate offense. However, the maximum amount of civil penalties which may be assessed for any series of violations occurring within one year from the date of the first violation shall not exceed one million dollars.

2001 Acts, ch 100, §4; 2001 Acts, ch 176, §61, 82
NEW section

103A.27 through 103A.29 Reserved.

DIVISION II
MANUFACTURED OR MOBILE HOME
TIEDOWN SYSTEMS

103A.30 Approved tiedown system — provided at sale — installation.

Any person who sells a new or used manufactured or mobile home shall provide an approved tiedown system.

The purchaser shall install or have installed this system within one hundred fifty days of locating the manufactured or mobile home on a permanent site.

2001 Acts, ch 153, §15; 2001 Acts, ch 176, §80
Terminology change applied

103A.31 Installer compliance and certification.

Any person who installs a tiedown system shall comply with the minimum standards for such systems, and shall provide the owner of the manufactured or mobile home on which installation is made and the commissioner with a certification of approved system installation. Such certification shall be in proper form as established by the commissioner.

2001 Acts, ch 153, §15; 2001 Acts, ch 176, §80
Terminology change applied

CHAPTER 123

ALCOHOLIC BEVERAGE CONTROL

123.49 Miscellaneous prohibitions.

1. A person shall not sell, dispense, or give to an intoxicated person, or one simulating intoxication, any alcoholic liquor, wine, or beer.

a. A person other than a person required to hold a license or permit under this chapter who dispenses or gives an alcoholic beverage, wine, or beer in violation of this subsection is not civilly liable to an injured person or the estate of a person for injuries inflicted on that person as a result of intoxication by the consumer of the alcoholic beverage, wine, or beer.

b. The general assembly declares that this subsection shall be interpreted so that the holding of *Clark v. Mincks*, 364 N.W.2d. 226 (Iowa 1985) is abrogated in favor of prior judicial interpretation finding the consumption of alcoholic beverages, wine, or beer rather than the serving of alcoholic beverages, wine, or beer as the proximate cause of injury inflicted upon another by an intoxicated person.

2. A person or club holding a liquor control license or retail wine or beer permit under this chapter, and the person's or club's agents or employees, shall not do any of the following:

a. Knowingly permit any gambling, except in accordance with chapter 99B, 99D, 99E, or 99F, or knowingly permit solicitation for immoral purposes, or immoral or disorderly conduct on the premises covered by the license or permit.

b. Sell or dispense any alcoholic beverage or beer on the premises covered by the license or permit, or permit its consumption thereon between the hours of two a.m. and six a.m. on a weekday, and between the hours of two a.m. on Sunday and six a.m. on the following Monday, however, a holder of a liquor control license or retail beer permit granted the privilege of selling alcoholic liquor or beer on Sunday may sell or dispense alcoholic liq-

uor or beer between the hours of eight a.m. on Sunday and two a.m. on the following Monday.

c. Sell alcoholic beverages, wine, or beer to any person on credit, except with a bona fide credit card. This provision does not apply to sales by a club to its members nor to sales by a hotel or motel to bona fide registered guests.

d. Keep on premises covered by a liquor control license any alcoholic liquor in any container except the original package purchased from the division, and except mixed drinks or cocktails mixed on the premises for immediate consumption. This prohibition does not apply to common carriers holding a class "D" liquor control license.

e. Reuse for packaging alcoholic liquor or wine any container or receptacle used originally for packaging alcoholic liquor or wine; or adulterate, by the addition of any substance, the contents or remaining contents of an original package of an alcoholic liquor or wine; or knowingly possess any original package which has been so reused or adulterated.

f. Employ a person under eighteen years of age in the sale or serving of alcoholic liquor, wine, or beer for consumption on the premises where sold.

g. Allow any person other than the licensee, permittee, or employees of the licensee or permittee, to use or keep on the licensed premises any alcoholic liquor in any bottle or other container which is designed for the transporting of such beverages, except as permitted in section 123.95. This paragraph does not apply to the lodging quarters of a class "B" liquor control licensee or wine or beer permittee, or to common carriers holding a class "D" liquor control license.

h. Sell, give, or otherwise supply any alcoholic beverage, wine, or beer to any person, knowing or failing to exercise reasonable care to ascertain whether the person is under legal age, or permit

any person, knowing or failing to exercise reasonable care to ascertain whether the person is under legal age, to consume any alcoholic beverage, wine, or beer.

i. In the case of a retail beer or wine permittee, knowingly allow the mixing or adding of alcohol or any alcoholic beverage to beer, wine, or any other beverage in or about the permittee's place of business.

j. Knowingly permit or engage in any criminal activity on the premises covered by the license or permit.

k. Sell or dispense any wine on the premises covered by the permit or permit the consumption on the premises between the hours of two a.m. and six a.m. on a weekday, and between the hours of two a.m. on Sunday and six a.m. on the following Monday, however, a holder of a wine permit authorized to sell wine on Sunday may sell or dispense wine between the hours of eight a.m. on Sunday and two a.m. on the following Monday.

3. A person under legal age shall not misrepresent the person's age for the purpose of purchasing or attempting to purchase any alcoholic beverage, wine, or beer from any licensee or permittee. If any person under legal age misrepresents the person's age, and the licensee or permittee establishes that the licensee or permittee made reasonable inquiry to determine whether the prospective purchaser was over legal age, the licensee or permittee is not guilty of selling alcoholic liquor, wine, or beer to a person under legal age.

4. No privilege of selling alcoholic liquor, wine, or beer on Sunday as provided in sections 123.36, subsection 6, and 123.134, subsection 5, shall be granted to a club or other organization which places restrictions on admission or membership in the club or organization on the basis of sex, race, religion, or national origin. However, the privilege may be granted to a club or organization which places restrictions on membership on the basis of sex, if the club or organization has an auxiliary organization open to persons of the other sex.

Civil liability for dispensing or sale and service to intoxicated persons; see §123.92

For scheduled fines applicable to violations of subsection 2, paragraph h, see §805.8C, subsection 2

Section not amended; footnote added

123.50 Criminal and civil penalties.

1. Any person who violates any of the provisions of section 123.49, except subsection 2, paragraph "h", shall be guilty of a simple misdemeanor. A person who violates section 123.49, subsection 2, paragraph "h", commits a simple misdemeanor punishable as a scheduled violation under section 805.8C, subsection 2.

2. The conviction of any liquor control licensee, wine permittee, or beer permittee for a violation of any of the provisions of section 123.49, subject to subsection 3 of this section, is grounds for the suspension or revocation of the license or per-

mit by the division or the local authority. However, if any liquor control licensee is convicted of any violation of subsection 2, paragraph "a", "d" or "e", of that section, or any wine or beer permittee is convicted of a violation of paragraph "a" or "e" of that section, the liquor control license, wine permit, or beer permit shall be revoked and shall immediately be surrendered by the holder, and the bond, if any, of the license or permit holder shall be forfeited to the division.

3. If any licensee, wine permittee, beer permittee, or employee of a licensee or permittee is convicted of a violation of section 123.49, subsection 2, paragraph "h", or if a retail wine or beer permittee is convicted of a violation of paragraph "i" of that subsection, the administrator or local authority shall, in addition to criminal penalties fixed for violations by this section, assess a civil penalty as follows:

a. Upon a first conviction, the violator's liquor control license, wine permit, or beer permit shall be suspended for a period of fourteen days. However, if the conviction is for a violation of section 123.49, subsection 2, paragraph "h", the violator's liquor control license or wine or beer permit shall not be suspended, but the violator shall be assessed a civil penalty in the amount of five hundred dollars. Failure to pay the civil penalty as ordered under section 123.39 for a violation of section 123.49, subsection 2, paragraph "h", or this subsection will result in automatic suspension of the license or permit for a period of fourteen days.

b. Upon a second conviction within a period of two years, the violator's liquor control license, wine permit, or beer permit shall be suspended for a period of thirty days. However, if the conviction is for a violation of section 123.49, subsection 2, paragraph "h", the violator shall also be assessed a civil penalty in the amount of one thousand five hundred dollars.

c. Upon a third conviction within a period of three years, the violator's liquor control license, wine permit, or beer permit shall be suspended for a period of sixty days. However, if the conviction is for a violation of section 123.49, subsection 2, paragraph "h", the violator shall also be assessed a civil penalty in the amount of one thousand five hundred dollars.

d. Upon a fourth conviction within a period of three years, the violator's liquor control license, wine permit, or beer permit shall be revoked.

4. In addition to any other penalties imposed under this chapter, the division shall assess a civil penalty up to the amount of five thousand dollars upon a class "E" liquor control licensee when the class "E" liquor license is revoked for a violation of section 123.59. Failure to pay the civil penalty as required under this subsection shall result in forfeiture of the bond to the division.

2001 Acts, ch 137, §5

Internal reference change applied

123.183 Wine gallonage tax and related funds.

1. In addition to the annual permit fee to be paid by each class “A” wine permittee, a wine gallonage tax shall be levied and collected from each class “A” wine permittee on all wine manufactured for sale and sold in this state at wholesale and on all wine imported into this state for sale at wholesale and sold in this state at wholesale. The rate of the wine gallonage tax is one dollar and seventy-five cents for each wine gallon. The same rate shall apply for the fractional parts of a wine gallon. The wine gallonage tax shall not be levied or collected on wine sold by one class “A” wine permittee to another class “A” wine permittee.

2. *a.* Revenue collected from the wine gallonage tax on wine manufactured for sale and sold in this state shall be deposited in the wine gallonage tax fund as created in this section.

b. A wine gallonage tax fund is created in the office of the treasurer of state. Moneys deposited in the fund are appropriated to the department of economic development as provided in section 15E.117. Moneys in the fund are not subject to section 8.33.

3. The revenue collected from the wine gallonage tax on wine imported into this state for sale at wholesale and sold in this state at wholesale shall be deposited as follows:

a. The revenue actually collected during each fiscal year from the wine gallonage tax on wine imported into this state at wholesale and sold in this state at wholesale that is in excess of the revenue estimated to be collected from such tax as last agreed to by the state revenue estimating conference during the previous fiscal year as provided in section 8.22A shall be deposited in the grape and wine development fund as created in section 175A.5. However, not more than seventy-five thousand dollars from such tax shall be deposited into the grape and wine development fund during any fiscal year.

b. The remaining revenue collected from the wine gallonage tax on wine imported into this state for sale at wholesale and sold in this state at wholesale shall be deposited in the liquor control fund created in section 123.53.

2001 Acts, ch 162, §1
Section amended

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, sub-

stance, 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, 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, mix-

ture, 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 (dextromethorphan). 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.

2001 Acts, ch 24, §28
Subsection 17 amended

124.204 Schedule I — substances included.

1. Schedule I 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. *Opiates*. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

- a. Acetylmethadol.
- b. Allylprodine.
- c. Alphacetylmethadol (except levo-alpha-acetylmethadol also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM).
- d. Alphameprodine.
- e. Alphamethadol.
- f. Alpha-Methylfentanyl (N-(1-(alpha-methyl-beta-phenyl) ethyl-4-piperidyl) propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido)piperidine).
- g. Benzethidine.
- h. Betacetylmethadol.
- i. Betameprodine.
- j. Betamethadol.
- k. Betaprodine.
- l. Clonitazene.
- m. Dextromoramide.
- n. Difenoxy.
- o. Diampromide.
- p. Diethylthiambutene.
- q. Dimenoxadol.
- r. Dimepheptanol.
- s. Dimethylthiambutene.
- t. Dioxaphetyl butyrate.
- u. Dipipanone.
- v. Ethylmethylthiambutene.
- w. Etonitazene.
- x. Etoxidine.
- y. Furethidine.

- z. Hydroxypethidine.
 - aa. Ketobemidone.
 - ab. Levomoramide.
 - ac. Levophenacymorphan.
 - ad. Morpheridine.
 - ae. Noracymethadol.
 - af. Norlevorphanol.
 - ag. Normethadone.
 - ah. Norpiperanone.
 - ai. Phenadoxone.
 - aj. Phenampromide.
 - ak. Phenomorphan.
 - al. Phenoperidine.
 - am. Piritramide.
 - an. Proheptazine.
 - ao. Properidine.
 - ap. Propiram.
 - aq. Racemoramide.
 - ar. Tilidine.
 - as. Trimeperidine.
 - at. Beta-hydroxy-3-methylfentanyl (other name: N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide).
 - au. Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide).
 - av. Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide).
 - aw. Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide).
 - ax. 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide).
 - ay. 3-Methylthiofentanyl (N-[(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide).
 - az. MPPP (1-methyl-4-phenyl-4-propionoxy-piperidine).
 - ba. Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl]-propanamide).
 - bb. PEPAP (1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine).
 - bc. Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide).
3. *Opium derivatives*. Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, their salts, isomers and salts of isomers, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:
- a. Acetorphine.
 - b. Acetyldihydrocodeine.
 - c. Benzylmorphine.
 - d. Codeine methylbromide.
 - e. Codeine-N-Oxide.
 - f. Cyprenorphine.
 - g. Desomorphine.
 - h. Dihydromorphine.
 - i. Etorphine (except hydrochloride salt).
 - j. Heroin.

- k. Hydromorphinol.
- l. Methyl-desorphine.
- m. Methyl-dihydromorphine.
- n. Morphine methylbromide.
- o. Morphine methylsulfonate.
- p. Morphine-N-Oxide.
- q. Myrophine.
- r. Nicocodeine.
- s. Nicomorphine.
- t. Normorphine.
- u. Phoclodine.
- v. Thebacon.
- w. Drotebanol.
4. *Hallucinogenic substances.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this paragraph only, the term “*isomer*” includes the optical, position and geometric isomers):
- a. 4-bromo-2,5-dimethoxy-amphetamine. Some trade or other names: 4-bromo-2,5-dimethoxy-a-methylphenethylamine; 4-bromo-2,5-DMA.
- b. 2,5-dimethoxyamphetamine. Some trade or other names: 2,5-dimethoxy-a-methylphenethylamine; 2,5-DMA.
- c. 4-methoxyamphetamine. Some trade or other names: 4-methoxy-a-methylphenethylamine; paramethoxyamphetamine, PMA.
- d. 5-methoxy-3,4-methylenedioxy-amphetamine.
- e. 4-methyl-2,5-dimethoxy-amphetamine. Some trade or other names: 4-methyl-2,5-dimethoxy-a-methylphenethylamine; “DOM”; and “STP”.
- f. 3,4-methylenedioxy amphetamine, also known as MDA.
- g. 3,4,5-trimethoxy amphetamine.
- h. Bufotenine. Some trade or other names: 3-(B-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N, N-dimethyltryptamine; mappine.
- i. Diethyltryptamine. Some trade and other names: N, N-Diethyltryptamine; DET.
- j. Dimethyltryptamine. Some trade or other names: DMT.
- k. Ibogaine. Some trade or other names: 7-Ethyl-6,6B,7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido (1',2':1,2) azepino (5,4-b) indole; Tabernanthe iboga.
- l. Lysergic acid diethylamide.
- m. Marijuana, except as otherwise provided by rules of the board of pharmacy examiners for medicinal purposes.
- n. Mescaline.
- o. Parahexyl. Some trade or other names: 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo (b,d) pyran; synhexyl.
- p. Peyote, except as otherwise provided in subsection 8. Meaning all parts of the plant presently classified botanically as *Lophophora williamsii* Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or extracts.
- q. N-ethyl-3-piperidyl benzilate.
- r. N-methyl-3-piperidyl benzilate.
- s. Psilocybin.
- t. Psilocyn.
- u. Tetrahydrocannabinols, except as otherwise provided by rules of the board of pharmacy examiners for medicinal purposes. Synthetic equivalents of the substances contained in the plant, or in the resinous extractives of *Cannabis* sp., and synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:
- (1) 1 cis or trans tetrahydrocannabinol, and their optical isomers, excluding dronabinol in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the United States food and drug administration.
- (2) 6 cis or trans tetrahydrocannabinol, and their optical isomers.
- (3) 3,4 cis or trans tetrahydrocannabinol, and their optical isomers. (Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)
- v. Ethylamine analog of phencyclidine. Some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE.
- w. Pyrrolidine analog of phencyclidine. Some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP.
- x. Thiophene analog of phencyclidine. Some trade or other names: 1-(1-(2-thienyl)-cyclohexyl)-piperidine, 2-thienylanalog of phencyclidine, TPCP, TCP.
- y. 1-[1-(2-thienyl)cyclohexyl]pyrrolidine. Some other names: TCPy.
- z. 3,4-methylenedioxymethamphetamine (MDMA).
- aa. 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine, N-ethyl MDA, MDE, MDEA).
- ab. N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy-alpha-methyl-3,4(methylenedioxy)phenethylamine, and N-hydroxy MDA).
- ac. 2,5-dimethoxy-4-ethylamphetamine.

Some trade or other names: DOET.

ad. Alpha-ethyltryptamine. Some trade or other names: etryptamine; Monase; alpha-ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl)indole; alpha-ET; and AET.

ae. 4-Bromo-2,5-dimethoxyphenethylamine. Some trade or other names: 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha-desmethyl DOB; 2C-B, Nexus.

5. *Depressants.* Unless specifically exempted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, their salts, isomers, and salts of isomers, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

a. Mecloqualone.

b. Methaqualone.

c. Gamma-hydroxybutyric acid. Some trade or other names: GHB; gamma-hydroxybutyrate; 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate.

6. *Stimulants.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

a. Fenethylamine.

b. N-ethylamphetamine.

c. (+)-cis-4-methylaminorex ((+)-cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine).

d. N,N-dimethylamphetamine (also known as N,N-alpha-trimethylbenzeneethanamine; N,N-alpha-trimethylphenethylamine).

e. Cathinone. Some trade or other names: 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone, and norephedrone.

f. Aminorex. Some other names: aminoxaphen; 2-amino-5-phenyl-2-oxazoline; 4,5-dihydro-5-phenyl-2-oxazolamine.

g. Methcathinone. Some other names: 2-(methylamino)-propiofenone; alpha-(methylamino)propiofenone; 2-(methylamino)-1-phenylpropan-1-one; alpha-N-methylaminopropiophenone; monomethylpropion; ephedrone; N-methylcathinone; methylcathinone; AL-464; AL-422; AL-463; and UR1432.

7. *Exclusions.* This section does not apply to marijuana, tetrahydrocannabinols or chemical derivatives of tetrahydrocannabinol when utilized for medicinal purposes pursuant to rules of the state board of pharmacy examiners.

8. *Peyote.* Nothing in this chapter shall apply to peyote when used in bona fide religious ceremonies of the Native American Church; however, persons supplying the product to the church shall register, maintain appropriate records of receipts and

disbursements of peyote, and otherwise comply with all applicable requirements of this chapter and rules adopted pursuant thereto.

9. *Other materials.* Any material, compound, mixture, or preparation which contains any quantity of the following substances:

a. N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (denzylfentanyl), its optical isomers, salts and salts of isomers.

b. N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (thenylfentanyl), its optical isomers, salts and salts of isomers.

2001 Acts, ch 58, §1
Subsection 5, NEW paragraph c

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 there-

of, 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.

l. Ketamine, its salts, isomers, and salts of isomers. Some other names for ketamine: (+)-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone.

m. Any drug product containing gamma-hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under section 505 of the federal Food, Drug, and Cosmetic Act.

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 (4-chlorotestosterone).

c. Clostebol.

d. Dehydrochlormethyltestosterone.

e. Dihydrotestosterone (4-dihydrotestosterone).

f. Drostanolone.

g. Ethylestrenol.

h. Fluoxymesterone.

i. Formebolone (formebolone).

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.

8. *Hallucinogenic substances.* Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a United States Food and Drug Administration approved product. Some other names for dronabinol: (6aR-trans)-6a, 7, 8, 10a-tetrahydro-6, 6, 9-trimethyl-3-pentyl-

6H-dibenzo [b,d] pyran-1-ol, or (-)-delta-9-(trans)-tetrahydrocannabinol.

2001 Acts, ch 58, §2
Subsection 3, NEW paragraph m

124.401E Certain penalties for manufacturing or delivery of amphetamine or methamphetamine.

1. If a court sentences a person for the person's first conviction for delivery or possession with intent to deliver a controlled substance under section 124.401, subsection 1, paragraph "c", and if the controlled substance is amphetamine, its salts, isomers, or salts of its isomers, or methamphetamine, its salts, isomers, or salts of its isomers, the court may suspend the sentence, and the court may order the person to complete a drug court program if a drug court has been established in the county in which the person is sentenced or order the person to be assigned to a community-based correctional facility for a period of one year or until maximum benefits are achieved, whichever is earlier.

2. If a court sentences a person for a conviction of manufacturing of a controlled substance under section 124.401, subsection 1, paragraph "c", and if the controlled substance is amphetamine, its

salts, isomers, or salts of its isomers, or methamphetamine, its salts, isomers, or salts of its isomers, the court may suspend the sentence, and the court may order the person to complete a drug court program if a drug court has been established in the county in which the person is sentenced, or order the person to be assigned to a community-based correctional facility for a period of one year or until maximum benefits are achieved, whichever is earlier.

3. If a court sentences a person for the person's second or subsequent conviction for delivery or possession with intent to deliver a controlled substance under section 124.401, subsection 1, and the controlled substance is amphetamine, its salts, isomers, or salts of its isomers, or methamphetamine, its salts, isomers, or salts of its isomers, the court, in addition to any other authorized penalties, shall sentence the person to imprisonment in accordance with section 124.401, subsection 1, and the person shall serve the minimum period of confinement as required by section 124.413.

Establishment and continuation of drug court pilot programs; evaluations; 99 Acts, ch 195, §3; 2000 Acts, ch 1221, §1, 5; 2001 Acts, ch 184, §1, 4, 15; 2001 Acts, ch 186, §6

Section not amended; footnote revised

CHAPTER 135

DEPARTMENT OF PUBLIC HEALTH

135.11 Duties of department.

The director of public health shall be the head of the "Iowa Department of Public Health", which shall:

1. Exercise general supervision over the public health, promote public hygiene and sanitation, prevent substance abuse and unless otherwise provided, enforce the laws relating to the same.

2. Conduct campaigns for the education of the people in hygiene and sanitation.

3. Issue monthly health bulletins containing fundamental health principles and other health data deemed of public interest.

4. Make investigations and surveys in respect to the causes of disease and epidemics, and the effect of locality, employment, and living conditions upon the public health. For this purpose the department may use the services of the experts connected with the state hygienic laboratory at the state university of Iowa.

5. Establish, publish, and enforce a code of rules governing the installation of plumbing in cities and amend the same when deemed necessary.

6. Exercise general supervision over the administration of the housing law and give aid to the local authorities in the enforcement of the same, and it shall institute in the name of the state such legal proceedings as may be necessary in the enforcement of said law.

7. Establish stations throughout the state for the distribution of antitoxins and vaccines to physicians, druggists, and other persons, at cost. All antitoxin and vaccine thus distributed shall be labeled "Iowa Department of Public Health".

8. Exercise general supervision over the administration and enforcement of the sexually transmitted diseases and infections law, chapter 139A, subchapter II.

9. Exercise sole jurisdiction over the disposal and transportation of the dead bodies of human beings and prescribe the methods to be used in preparing such bodies for disposal and transportation. However, the department may approve a request for an exception to the application of specific embalming and disposition rules adopted pursuant to this subsection if such rules would otherwise conflict with tenets and practices of a recognized religious denomination to which the deceased individual adhered or of which denomination the deceased individual was a member. The department shall inform the board of mortuary science examiners of any such approved exception which may affect services provided by a funeral director licensed pursuant to chapter 156.

10. Exercise general supervision over the administration and enforcement of the vital statistics law, chapter 144.

11. Enforce the law relative to chapter 146 and

“Health-related Professions,” Title IV, subtitle 3, excluding chapter 155.

12. Establish and maintain such divisions in the department as are necessary for the proper enforcement of the laws administered by it, including a division of contagious and infectious diseases, a division of venereal diseases, a division of housing, a division of sanitary engineering, and a division of vital statistics, but the various services of the department shall be so consolidated as to eliminate unnecessary personnel and make possible the carrying on of the functions of the department under the most economical methods.

13. Establish, publish, and enforce rules not inconsistent with law for the enforcement of the provisions of chapters 125 and 155, and Title IV, subtitle 2, excluding chapters 142B, 145B, and 146 and for the enforcement of the various laws, the administration and supervision of which are imposed upon the department.

14. Establish standards for, issue permits for, and exercise control over the distribution of venereal disease prophylactics distributed by methods not under the direct supervision of a physician licensed under chapter 148, 150 or 150A, or a pharmacist licensed under chapter 147. Any person selling, offering for sale, or giving away any venereal disease prophylactics in violation of the standards established by the department shall be fined not exceeding five hundred dollars, and the department shall revoke their permit.

15. Administer the statewide public health nursing, homemaker-home health aide, and senior health programs by approving grants of state funds to the local boards of health and the county boards of supervisors and by providing guidelines for the approval of the grants and allocation of the state funds. Program direction, evaluation requirements, and formula allocation procedures for each of the programs shall be established by the department by rule, consistent with 1997 Iowa Acts, chapter 203, section 5.

16. Administer chapters 125, 136A, 136C, 139A, 142, 144, and 147A.

17. Issue an annual report to the governor as provided in section 7E.3, subsection 4.

18. Consult with the office of statewide clinical education programs at the university of Iowa college of medicine and annually submit a report to the general assembly by January 15 verifying the number of physicians in active practice in Iowa by county who are engaged in providing obstetrical care. To the extent data are readily available, the report shall include information concerning the number of deliveries per year by specialty and county, the age of physicians performing deliveries, and the number of current year graduates of the university of Iowa college of medicine and the Des Moines university — osteopathic medical center entering into residency programs in obstetrics, gynecology, and family practice. The report may include additional data relating to access to ob-

stetrical services that may be available.

19. Administer the statewide maternal and child health program and the program for children with disabilities by conducting mobile and regional child health specialty clinics and conducting other activities to improve the health of low-income women and children and to promote the welfare of children with actual or potential conditions which may cause disabilities and children with chronic illnesses in accordance with the requirements of Title V of the federal Social Security Act. The department shall provide technical assistance to encourage the coordination and collaboration of state agencies in developing outreach centers which provide publicly supported services for pregnant women, infants, and children. The department shall also, through cooperation and collaborative agreements with the department of human services and the mobile and regional child health specialty clinics, establish common intake proceedings for maternal and child health services. The department shall work in cooperation with the legislative fiscal bureau in monitoring the effectiveness of the maternal and child health centers, including the provision of transportation for patient appointments and the keeping of scheduled appointments.

20. Establish, publish, and enforce rules requiring prompt reporting of methemoglobinemia, pesticide poisoning, and the reportable poisonings and illnesses established pursuant to section 139A.21.

21. Collect and maintain reports of pesticide poisonings and other poisonings, illnesses, or injuries caused by selected chemical or physical agents, including methemoglobinemia and pesticide and fertilizer hypersensitivity; and compile and publish, annually, a statewide and county-by-county profile based on the reports.

22. Adopt rules which require personnel of a licensed hospice, of a homemaker-home health aide provider agency which receives state homemaker-home health aide funds, or of an agency which provides respite care services and receives funds to complete a minimum of two hours of training concerning acquired immune deficiency syndrome-related conditions through a program approved by the department. The rules shall require that new employees complete the training within six months of initial employment and existing employees complete the training on or before January 1, 1989.

23. Adopt rules which require all emergency medical services personnel, firefighters, and law enforcement personnel to complete a minimum of two hours of training concerning acquired immune deficiency syndrome-related conditions and the prevention of human immunodeficiency virus infection.

24. Adopt rules which provide for the testing of a convicted or alleged offender for the human immunodeficiency virus pursuant to sections 915.40

through 915.43. The rules shall provide for the provision of counseling, health care, and support services to the victim.

25. Establish ad hoc and advisory committees to the director in areas where technical expertise is not otherwise readily available. Members may be compensated for their actual and necessary expenses incurred in the performance of their duties. To encourage health consumer participation, public members may also receive a per diem as specified in section 7E.6 if funds are available and the per diem is determined to be appropriate by the director. Expense moneys paid to the members shall be paid from funds appropriated to the department. A majority of the members of such a committee constitutes a quorum.

26. Establish an abuse education review panel for review and approval of mandatory reporter training curricula for those persons who work in a position classification that under law makes the persons mandatory reporters of child or dependent adult abuse and the position classification does not have a mandatory reporter training curriculum approved by a licensing or examining board.

27. Establish and administer a substance abuse treatment facility pursuant to section 135.130.

28. Conduct and maintain a statewide risk assessment of any present or potential danger to the public health from biological agents. For this purpose, an employee or agent of the department may enter into and examine any premises containing potentially dangerous biological agents. However, the owner or person in charge of the premises shall be notified. If the owner or person in charge refuses admittance, the department may obtain administrative search warrants under section 808.14. Based upon findings of the risk assessment and examination of the premises, the director may order safeguards or take any other action necessary to protect the public health pursuant to rules adopted to implement this subsection.

2001 Acts, ch 58, §3; 2001 Acts, ch 122, §1; 2001 Acts, ch 184, §6; 2001 Acts, 2nd Ex, ch 1, §25, 28

Laboratory tests, §263.7, 263.8

Establishment and funding of state poison control center; 2000 Acts, ch 1221, §1; 2001 Acts, ch 184, §1

Subsection 28 takes effect November 14, 2001, and applies retroactively to and after September 11, 2001; 2001 Acts, 2nd Ex, ch 1, §28

Subsection 25 amended

NEW subsections 26 – 28

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, clinics, or other health care facilities, health care referral programs, or charitable organizations, free medical and dental 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, the board of dental 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 or dental 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.

c. Identification of the medical services to be provided under the program. The medical services provided may include, but shall not be limited to, obstetrical and gynecological medical services, and psychiatric services provided by a physician licensed under chapter 148, 150, or 150A.

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 or dental services through a hospital, clinic, or other health care facility, health care referral program, or charitable organization listed as eligible 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 or dental services to children and to serve as a funding mechanism for provision of medical or dental 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, a registered nurse, or a dentist licensed to practice under chapter 153.

2001 Acts, ch 176, §31

Subsection 2, paragraph c amended

135.83 Contracts for assistance with analyses, studies, and data.

In furtherance of the department's responsibilities under sections 135.76 and 135.78, the director may contract with the Iowa hospital association and third-party payers, the Iowa health care facilities association and third-party payers, or the Iowa association of homes for the aging and third-party payers for the establishment of pilot programs dealing with prospective rate review in hospitals or health care facilities, or both. Such contract shall be subject to the approval of the executive council and shall provide for an equitable representation of health care providers, third-party payers, and health care consumers in the determination of criterion for rate review. No third-party payer shall be excluded from positive financial incentives based upon volume of gross patient revenues. No state or federal funds appropriated or available to the department shall be used for any such pilot program.

2001 Acts, ch 74, §2
Section amended

135.102 Rules.

The department shall adopt rules, pursuant to chapter 17A, regarding the:

1. Implementation of the grant program pursuant to section 135.103.
2. Maintenance of laboratory facilities for the childhood lead poisoning prevention program.
3. Maximum blood lead levels in children living in targeted rental dwelling units.
4. Standards and program requirements of the grant program pursuant to section 135.103.
5. Prioritization of proposed childhood lead poisoning prevention programs, based on the geographic areas known with children identified with elevated blood lead level resulting from surveys completed by the department.
6. Model regulations for lead hazard remediation to be used in instances in which a child is confirmed as lead poisoned. The department shall make the model regulations available to local boards of health and shall promote the adoption of the regulations at the local level, in cities and counties implementing lead hazard remediation programs. Nothing in this subsection shall be construed as requiring the adoption of the model regulations.

2001 Acts, ch 182, §9
NEW subsection 6

135.105C Renovation, remodeling, and repainting — lead hazard notification process established.

1. A person who performs renovation, remodeling, or repainting services of target housing for compensation shall provide an approved lead hazard information pamphlet to the owner and occu-

pant of the housing prior to commencing the services.

2. For the purpose of this section, "target housing" means housing constructed prior to 1978 with the exception of housing for the elderly or for persons with disabilities and housing that does not contain a bedroom, unless at least one child, under six years of age, resides or is expected to reside in the housing. The department shall adopt rules to implement the renovation, remodeling, and repainting lead hazard notification process.

3. A person who violates this section is subject to a civil penalty not to exceed five thousand dollars for each offense.

2001 Acts, ch 58, §4
NEW subsection 3

135.113 through 135.117 Reserved.

DIVISION XII

CHILD PROTECTION CENTER
GRANT PROGRAM

135.118 Child protection center grant program.

1. A child protection center grant program is established in the Iowa department of public health in accordance with this section. The director of public health shall establish requirements for the grant program and shall award grants. A grant may be used for establishment of a new center or for support of an existing center.

2. The eligibility requirements for a child protection center grant shall include but are not limited to all of the following:

a. A grantee must meet or be in the process of meeting the standards established by the national children's alliance for children's advocacy centers.

b. A grantee must have in place an interagency memorandum of understanding regarding participation in the operation of the center and for coordinating the activities of the government entities that respond to cases of child abuse in order to facilitate the appropriate disposition of child abuse cases through the juvenile and criminal justice systems. Agencies participating under the memorandum must include the following that are operating in the area served by the grantee:

(1) Department of human services county offices assigned to child protection.

(2) County and municipal law enforcement agencies.

(3) Office of the county attorney.

(4) Other government agencies involved with child abuse assessments or service provision.

c. The interagency memorandum must provide for a cooperative team approach to responding to child abuse, reducing the number of interviews required of a victim of child abuse, and es-

establishing an approach that emphasizes the best interest of the child and that provides investigation, assessment, and rehabilitative services.

d. As necessary to address serious cases of child abuse such as those involving sexual abuse, serious physical abuse, and substance abuse, a grantee must be able to involve or consult with persons from various professional disciplines who have training and expertise in addressing special types of child abuse. These persons may include but are not limited to physicians and other health care professionals, mental health professionals, social workers, child protection workers, attorneys, juvenile court officers, public health workers, child development experts, child educators, and child advocates.

3. The director shall create a committee to consider grant proposals and to make grant recommendations to the director. The committee membership may include but is not limited to representatives of the following: departments of human services, justice, and public health, Iowa medical society, Iowa hospital association, Iowa nurses association, and an association representing social workers.

4. Implementation of the grant program is subject to the availability of funding for the grant program.

2001 Acts, ch 166, §1
NEW section

135.119 Reserved.

DIVISION XIII

TAXATION OF ORGANIZED DELIVERY SYSTEMS

Former division XII renumbered as XIII

135.121 through 135.129 Reserved.

DIVISION XIV

SUBSTANCE ABUSE TREATMENT FACILITY FOR PERSONS ON PROBATION

135.130 Substance abuse treatment facility for persons on probation.

1. The director shall establish and operate a facility for the purpose of providing a structured treatment program for persons with a substance abuse problem who are on probation and under the supervision of a judicial district department of correctional services. The department shall enter into an agreement pursuant to chapter 28E with the department of corrections for assistance in establishing security for the facility. The department, in consultation with the department of corrections, shall adopt rules pursuant to chapter 17A to administer this section. The rules adopted shall include rules related to the treatment requirements of the program.

2. A substance abuse treatment facility advisory council is established within the department to advise and make recommendations to the director regarding the establishment and operation of a facility for persons with a substance abuse problem who are on probation and to assist with the implementation of treatment programs that are proven to be effective for offenders. The substance abuse treatment facility advisory council shall consist of the directors of the eight judicial district departments of correctional services and one representative each from the judicial branch, the Iowa department of public health, the department of corrections, and the governor's office of drug control policy.

3. The department, in consultation with the department of corrections and the advisory council, shall adopt rules pursuant to chapter 17A to establish and operate the facility.

2001 Acts, ch 184, §7
NEW section

CHAPTER 135B

LICENSURE AND REGULATION OF HOSPITALS

135B.7A Procedures — orders.

The department shall adopt rules that require hospitals to establish procedures for authentication of medication and standing orders by a practitioner within a period not to exceed thirty days fol-

lowing a patient's discharge.

2001 Acts, ch 93, §1
Section is repealed June 30, 2007; 2001 Acts, ch 93, §2
NEW section

CHAPTER 135C

HEALTH CARE FACILITIES

Modified price-based case-mix reimbursement for nursing facilities; three-year phase-in period; 2001 Acts, ch 192, §4

135C.1 Definitions.

1. “*Adult day services*” means adult day services as defined in section 231.61 that are provided in a licensed health care facility.

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

3. “*Direction*” means authoritative policy or procedural guidance for the accomplishment of a function or activity.

4. “*Director*” means the director of the department of inspections and appeals, or the director’s designee.

5. “*Governmental unit*” means the state, or any county, municipality, or other political subdivision or any department, division, board or other agency of any of the foregoing.

6. “*Health care facility*” or “*facility*” means a residential care facility, a nursing facility, an intermediate care facility for persons with mental illness, or an intermediate care facility for persons with mental retardation.

7. “*House physician*” means a physician who has entered into a two-party contract with a health care facility to provide services in that facility.

8. “*Intermediate care facility for persons with mental illness*” means an institution, place, building, or agency designed to provide accommodation, board, and nursing care for a period exceeding twenty-four consecutive hours to three or more individuals, who primarily have mental illness and who are not related to the administrator or owner within the third degree of consanguinity.

9. “*Intermediate care facility for persons with mental retardation*” means an institution or distinct part of an institution with a primary purpose to provide health or rehabilitative services to three or more individuals, who primarily have mental retardation or a related condition and who are not related to the administrator or owner within the third degree of consanguinity, and which meets the requirements of this chapter and federal standards for intermediate care facilities for persons with mental retardation established pursuant to the federal Social Security Act, § 1905(c)(d), as codified in 42 U.S.C. § 1936d, which are contained in 42 C.F.R. pt. 483, subpt. D, § 410 – 480.

10. “*Licensee*” means the holder of a license issued for the operation of a facility, pursuant to this chapter.

11. “*Mental illness*” means a substantial disorder of thought or mood which significantly impairs judgment, behavior, or the capacity to recognize reality or the ability to cope with the ordinary demands of life.

12. “*Nursing care*” means those services which

can be provided only under the direction of a registered nurse or a licensed practical nurse.

13. “*Nursing facility*” means an institution or a distinct part of an institution housing three or more individuals not related to the administrator or owner within the third degree of consanguinity, which is primarily engaged in providing health-related care and services, including rehabilitative services, but which is not engaged primarily in providing treatment or care for mental illness or mental retardation, for a period exceeding twenty-four consecutive hours for individuals who, because of a mental or physical condition, require nursing care and other services in addition to room and board.

14. “*Person*” means any individual, firm, partnership, corporation, company, association or joint stock association; and includes trustee, receiver, assignee or other similar representative thereof.

15. “*Physician*” has the meaning assigned that term by section 135.1, subsection 4.

16. “*Rehabilitative services*” means services to encourage and assist restoration of optimum mental and physical capabilities of the individual resident of a health care facility.

17. “*Residential care facility*” means any institution, place, building, or agency providing for a period exceeding twenty-four consecutive hours accommodation, board, personal assistance and other essential daily living activities to three or more individuals, not related to the administrator or owner thereof within the third degree of consanguinity, who by reason of illness, disease, or physical or mental infirmity are unable to sufficiently or properly care for themselves but who do not require the services of a registered or licensed practical nurse except on an emergency basis.

18. “*Resident*” means an individual admitted to a health care facility in the manner prescribed by section 135C.23.

19. “*Respite care services*” means an organized program of temporary supportive care provided for twenty-four hours or more to a person in order to relieve the usual caregiver of the person from providing continual care to the person.

20. “*Social services*” means services relating to the psychological and social needs of the individual in adjusting to living in a health care facility, and minimizing stress arising from that circumstance.

21. “*Supervision*” means direct oversight and inspection of the act of accomplishing a function or activity.

2001 Acts, ch 64, §2
Subsection 1 amended

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 persons with mental illness, intermediate care facility for persons with mental retardation, 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 li-

censed within the special classification.

c. The rules adopted for intermediate care facilities for persons with mental retardation shall be consistent with, but no more restrictive than, the federal standards for intermediate care facilities for persons with mental retardation 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 persons with mental retardation 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 persons with mental retardation pursuant to section 135C.14, subsection 8.

d. Notwithstanding the limitations set out in this subsection regarding rules for intermediate care facilities for persons with mental retardation, 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 persons with mental retardation. 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 classifi-

cation 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. 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. The facilities licensed under this subsection shall be eligible for funding utilized by other licensed residential care facilities for persons with mental retardation, or licensed residential care facilities for persons with mental illness, 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 services provided in a health care facility. However, adult day 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.

7. The rules adopted by the department regard-

ing nursing facilities shall provide that a nursing facility may choose to be inspected either by the department or by the joint commission on accreditation of health care organizations. The rules regarding acceptance of inspection by the joint commission on accreditation of health care organizations shall include recognition, in lieu of inspection by the department, of comparable inspections and inspection findings of the joint commission on accreditation of health care organizations, if the department is provided with copies of all requested materials relating to the inspection process.

2001 Acts, ch 64, §3
Subsection 7 is effective contingent upon passage of federal legislation; see 96 Acts, ch 1053, §3
Subsection 6, paragraph a amended

135C.9 Inspection before issuance — notice of deficiencies.

1. The department shall not issue a health care facility license to any applicant until:

a. The department has ascertained that the staff and equipment of the facility is adequate to provide the care and services required of a health care facility of the category for which the license is sought. Prior to the review and approval of plans and specifications for any new facility and the initial licensing under a new licensee, a resume of the programs and services to be furnished and of the means available to the applicant for providing the same and for meeting requirements for staffing, equipment, and operation of the health care facility, with particular reference to the professional requirements for services to be rendered, shall be submitted in writing to the department for review and approval. The resume shall be reviewed by the department within ten working days and returned to the applicant. The resume shall, upon the department's request, be revised as appropriate by the facility from time to time after issuance of a license.

b. The facility has been inspected by the state fire marshal or a deputy appointed by the fire marshal for that purpose, who may be a member of a municipal fire department, and the department has received either a certificate of compliance or a provisional certificate of compliance by the facility with the fire hazard and fire safety rules and standards of the department as promulgated by the fire marshal and, where applicable, the fire safety standards required for participation in programs authorized by either Title XVIII or Title XIX of the United States Social Security Act (42 U.S.C. § 1395 to 1395ll and 1396 to 1396g). The certificate or provisional certificate shall be signed by the fire marshal or the fire marshal's deputy who made the inspection. If the state fire marshal or a deputy finds a deficiency upon inspection, the notice to the facility shall be provided in a timely manner and shall specifically describe the nature of the deficiency, identifying the Code section or subsection or the rule or standard violated. The

notice shall also specify the time allowed for correction of the deficiency, at the end of which time the fire marshal or a deputy shall perform a follow-up inspection.

2. The rules and standards promulgated by the fire marshal pursuant to subsection 1, paragraph "b" of this section shall be substantially in keeping with the latest generally recognized safety criteria for the facilities covered, of which the applicable criteria recommended and published from time to time by the national fire protection association shall be prima facie evidence. The rules and standards promulgated by the fire marshal shall be promulgated in consultation with the department and shall, to the greatest extent possible, be consistent with rules adopted by the department under this chapter.

3. The state fire marshal or the fire marshal's deputy may issue successive provisional certificates of compliance for periods of one year each to a facility which is in substantial compliance with the applicable fire hazard and fire safety rules and standards, upon satisfactory evidence of an intent, in good faith, by the owner or operator of the facility to correct the deficiencies noted upon inspection within a reasonable period of time as determined by the state fire marshal or the fire marshal's deputy. Renewal of a provisional certificate shall be based on a showing of substantial progress in eliminating deficiencies noted upon the last previous inspection of the facility without the appearance of additional deficiencies other than those arising from changes in the fire hazard and fire safety rules, regulations and standards which have occurred since the last previous inspection, except that substantial progress toward achievement of a good faith intent by the owner or operator to replace the entire facility within a reasonable period of time, as determined by the state fire marshal or the fire marshal's deputy, may be accepted as a showing of substantial progress in eliminating deficiencies, for the purposes of this section.

4. If a facility subject to licensure under this chapter, a facility exempt from licensure under this chapter pursuant to section 135C.6, or a family home under section 335.25 or 414.22, has been issued a certificate of compliance or a provisional certificate of compliance under subsection 1 or 3, or has otherwise been approved as complying with a rule or standard by the state or a deputy fire marshal or a local building department as defined in section 103A.3, the state or deputy fire marshal or local building department which issued the certificate, provisional certificate, or approval shall not apply additional requirements for compliance with the rule or standard unless the rule or standard is revised in accordance with chapter 17A or with local regulatory procedure following issuance of the certificate, provisional certificate, or approval.

2001 Acts, ch 30, §1, 2
 Subsection 1, paragraph b amended
 Subsection 2 amended

135C.14 Rules.

The department shall, in accordance with chapter 17A and with the approval of the state board of health, adopt and enforce rules setting minimum standards for health care facilities. In so doing, the department, with the approval of the state board of health, may adopt by reference, with or without amendment, nationally recognized standards and rules, which shall be specified by title and edition, date of publication, or similar information. The rules and standards required by this section shall be formulated in consultation with the director of human services or the director's designee, with the state fire marshal, and with affected industry, professional, and consumer groups, and shall be designed to further the accomplishment of the purposes of this chapter and shall relate to:

1. Location and construction of the facility, including plumbing, heating, lighting, ventilation, and other housing conditions, which shall ensure the health, safety and comfort of residents and protection from fire hazards. The rules of the department relating to protection from fire hazards and fire safety shall be promulgated by the state fire marshal in consultation with the department, and shall be in keeping with the latest generally recognized safety criteria for the facilities covered of which the applicable criteria recommended and published from time to time by the national fire protection association are prima facie evidence. To the greatest extent possible, the rules promulgated by the state fire marshal shall be consistent with the rules adopted by the department under this chapter.

2. Number and qualifications of all personnel, including management and nursing personnel, having responsibility for any part of the care provided to residents.

3. All sanitary conditions within the facility and its surroundings including water supply, sewage disposal, food handling, and general hygiene, which shall ensure the health and comfort of residents.

4. Diet related to the needs of each resident and based on good nutritional practice and on recommendations which may be made by the physician attending the resident.

5. Equipment essential to the health and welfare of the resident.

6. Requirements that a minimum number of registered or licensed practical nurses and nurses' aides, relative to the number of residents admitted, be employed by each licensed facility. Staff-to-resident ratios established under this subsection need not be the same for facilities holding different types of licenses, nor for facilities holding the same type of license if there are significant differences in the needs of residents which the respective facilities are serving or intend to serve.

7. Social services and rehabilitative services provided for the residents.

8. Facility policies and procedures regarding the treatment, care, and rights of residents. The rules shall apply the federal resident's rights contained in the federal Omnibus Budget Reconciliation Act of 1987, Pub. L. No. 100-203, and the regulations adopted pursuant to the Act and contained in 42 C.F.R. § 483.10, 483.12, 483.13, and 483.15, as amended to February 2, 1989, to all health care facilities as defined in this chapter and shall include procedures for implementing and enforcing the federal rules. The department shall also adopt rules relating to the following:

a. The transfer of residents to other rooms within a facility.

b. The involuntary discharge or transfer of residents from a facility including provisions for notice and agency hearings and for the development of a patient discharge or transfer plan and for providing counseling services to a patient being discharged or transferred.

c. The required holding of a bed for a resident under designated circumstances upon payment of a prescribed charge for the bed.

d. The notification of resident advocate committees by the department of all complaints relating to health care facilities and the involvement of the resident advocate committees in resolution of the complaints.

e. For the recoupment of funds or property to residents when the resident's personal funds or property have been used without the resident's written consent or the written consent of the resident's guardian.

2001 Acts, ch 30, §3, 4
Unnumbered paragraph 1 amended
Subsection 1 amended

135C.33 Child or dependent adult abuse information and criminal records — evaluations — application to other providers.

1. Beginning July 1, 1997, prior to employment of a person in a facility, the facility shall request that the department of public safety perform a criminal history check and the department of human services perform a dependent adult abuse record check of the person in this state. In addition, the facility may request that the department of human services perform a child abuse record check in this state. Beginning July 1, 1997, a facility shall inform all persons prior to employment regarding the performance of the records checks and shall obtain, from the persons, a signed acknowledgment of the receipt of the information. Additionally, a facility shall include the following inquiry in an application for employment: "Do you have a record of founded child or dependent adult abuse or have you ever been convicted of a crime, in this state or any other state?" If the person has been convicted of a crime under a law of any state or has a record of founded child or dependent adult abuse, the department of human services shall, upon the facility's request, perform an

evaluation to determine whether the crime or founded child or dependent adult abuse warrants prohibition of employment in the facility. The evaluation shall be performed in accordance with procedures adopted for this purpose by the department of human services. If a person owns or operates more than one facility, and an employee of one of such facilities is transferred to another such facility without a lapse in employment, the facility is not required to request additional criminal and dependent adult abuse record checks of that employee.

2. If the department of public safety determines that a person has committed a crime and is to be employed in a facility licensed under this chapter, the department of public safety shall notify the licensee that an evaluation, if requested by the facility, will be conducted by the department of human services to determine whether prohibition of the person's employment is warranted. If a department of human services child or dependent adult abuse records check determines the person has a record of founded child or dependent adult abuse, the department of human services shall inform the licensee that an evaluation, if requested by the facility, will be conducted to determine whether prohibition of the person's employment is warranted.

3. In an evaluation, the department of human services shall consider the nature and seriousness of the crime or founded child or dependent adult abuse in relation to the position sought or held, the time elapsed since the commission of the crime or founded child or dependent adult abuse, the circumstances under which the crime or founded child or dependent adult abuse was committed, the degree of rehabilitation, the likelihood that the person will commit the crime or founded child or dependent adult abuse again, and the number of crimes or founded child or dependent adult abuses committed by the person involved. The department of human services has final authority in determining whether prohibition of the person's employment is warranted.

4. A person shall not be employed in a facility licensed under this chapter unless an evaluation has been performed by the department of human services. If the department of human services determines from the evaluation that the person has committed a crime or has a record of founded child or dependent adult abuse which warrants prohibition of employment, the person shall not be employed in a facility licensed under this chapter.

5. Beginning July 1, 1998, this section shall apply to prospective employees of all of the following, if the provider is regulated by the state or receives any state or federal funding:

a. An employee of a homemaker, home-health aide, home-care aide, adult day services, or other provider of in-home services if the employee provides direct services to consumers.

b. An employee of a hospice, if the employee provides direct services to consumers.

c. An employee who provides direct services to consumers under a federal home and community-based services waiver.

d. An employee of an elder group home certified under chapter 231B, if the employee provides direct services to consumers.

e. An employee of an assisted living facility certified or voluntarily accredited under chapter 231C, if the employee provides direct services to consumers.

In substantial conformance with the provisions of this section, prior to the employment of such an employee, the provider shall request the performance of the criminal and dependent adult abuse record checks and may request the performance of the child abuse record checks. The provider shall inform the prospective employee and obtain the prospective employee's signed acknowledgment. The department of human services shall perform the evaluation of any criminal record or founded

child or dependent adult abuse record and shall make the determination of whether a prospective employee of a provider shall not be employed by the provider.

6. a. The department of inspections and appeals, in conjunction with other departments and agencies of state government involved with criminal history and abuse registry information, shall establish a single contact repository for facilities and other providers to have electronic access to data to perform background checks for purposes of employment, as required of the facilities and other providers under this section.

b. The department may access the single contact repository for any of the following purposes:

(1) To verify data transferred from the department's nurse aide registry to the repository.

(2) To conduct record checks of applicants for employment with the department.

2001 Acts, ch 8, §1; 2001 Acts, ch 20, §2, 3; 2001 Acts, ch 64, §4
Section amended

CHAPTER 135H

PSYCHIATRIC MEDICAL INSTITUTIONS FOR CHILDREN

135H.6 Inspection — conditions for issuance.

The department shall issue a license to an applicant under this chapter if all the following conditions exist:

1. The department has ascertained that the applicant's medical facilities and staff are adequate to provide the care and services required of a psychiatric institution.

2. The proposed psychiatric institution is accredited by the joint commission on the accreditation of health care organizations, the commission on accreditation of rehabilitation facilities, the council on accreditation of services for families and children, or by any other recognized accrediting organization with comparable standards acceptable under federal regulation.

3. The applicant complies with applicable state rules and standards for a psychiatric institution adopted by the department in accordance with federal requirements under 42 C.F.R. § 441.150 – 441.156.

4. The applicant has been awarded a certificate of need pursuant to chapter 135, unless exempt as provided in this section.

5. The department of human services has submitted written approval of the application based on the department of human services' determination of need. The department of human services shall identify the location and number of children in the state who require the services of a psychiatric medical institution for children. Approval of an application shall be based upon the location of the

proposed psychiatric institution relative to the need for services identified by the department of human services and an analysis of the applicant's ability to provide services and support consistent with requirements under chapter 232, particularly regarding community-based treatment. If the proposed psychiatric institution is not freestanding from a facility licensed under chapter 135B or 135C, approval under this subsection shall not be given unless the department of human services certifies that the proposed psychiatric institution is capable of providing a resident with a living environment similar to the living environment provided by a licensee which is freestanding from a facility licensed under chapter 135B or 135C.

6. The department of human services shall not give approval to an application which would cause the total number of beds licensed under this chapter for services reimbursed by the medical assistance program under chapter 249A to exceed four hundred thirty beds.

7. In addition to the beds authorized under subsection 6, the department of human services may establish not more than thirty beds licensed under this chapter at the state mental health institute at Independence. The beds shall be exempt from the certificate of need requirement under subsection 4.

8. The department of human services may give approval to conversion of beds approved under subsection 6, to beds which are specialized to provide substance abuse treatment. However, the total number of beds approved under subsection 6

and this subsection shall not exceed four hundred thirty. Conversion of beds under this subsection shall not require a revision of the certificate of need issued for the psychiatric institution making the conversion.

9. The proposed psychiatric institution is under the direction of an agency which has operated a facility licensed under section 237.3, subsection 2, paragraph “a”, as a comprehensive residential facility for children for three years or of an agency which has operated a facility for three years providing psychiatric services exclusively to children or adolescents and the facility meets or exceeds requirements for licensure under section 237.3, subsection 2, paragraph “a”, as a comprehensive residential facility for children.

10. A psychiatric institution licensed prior to July 1, 1999, may exceed the number of beds authorized under subsection 6 if the excess beds are used to provide services funded from a source other than the medical assistance program under chapter 249A. Notwithstanding subsections 4, 5, and 6, the provision of services using those excess beds does not require a certificate of need or a review by the department of human services.

2001 Acts, ch 191, §35
Subsection 2 amended

135H.10 Rules.

1. The department of inspections and appeals, in consultation with the department of human services and affected professional groups, shall adopt

and enforce rules setting out the standards for a psychiatric medical institution for children and the rights of the residents admitted to a psychiatric institution. The department of inspections and appeals and the department of human services shall coordinate the adoption of rules and the enforcement of the rules in order to prevent duplication of effort by the departments and of requirements of the licensee.

2. This chapter shall not be construed as prohibiting the use of funds appropriated for foster care to provide payment to a psychiatric medical institution for children for the financial participation required of a child whose foster care placement is in a psychiatric medical institution for children. In accordance with established policies and procedures for foster care, the department of human services shall act to recover any such payment for financial participation, apply to be named payee for the child’s unearned income, and recommend parental liability for the costs of a court-ordered foster care placement in a psychiatric medical institution.

3. Except for those psychiatric medical institutions for children which are specialized to provide substance abuse treatment, unless expressly authorized in statute, the department of human services shall not include services provided by psychiatric medical institutions for children in any managed care contract.

2001 Acts, ch 135, §30
NEW subsection 3

CHAPTER 135I

SWIMMING POOLS AND SPAS

135I.1 Definitions.

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

1. “*Department*” means the Iowa department of public health.

2. “*Local board of health*” means a county, city, or district board of health as defined in section 137.2.

3. “*Spa*” means a bathing facility such as a hot tub or whirlpool designed for recreational or therapeutic use.

4. “*Swimming pool*” means an artificial basin and its appurtenances, either constructed or operated for swimming, wading, or diving, and includes a swimming pool, wading pool, waterslide, or associated bathhouse. “*Swimming pool*” does not include a decorative fountain which does not serve primarily as a wading or swimming pool and the drain of which fountain is not connected to any type of suction device for removing or recirculating the water.

5. “*Swimming pool or spa water heater*” means an appliance designed for heating nonpotable water stored at atmospheric pressure, such as water

in a swimming pool, spa, hot tub, or for similar uses.

2001 Acts, ch 58, §5
Subsection 3 amended

135I.2 Applicability.

This chapter applies to all swimming pools and spas owned or operated by local or state government, or commercial interests or private entities including, but not limited to, facilities operated by cities, counties, public or private school corporations, hotels, motels, camps, apartments, condominiums, and health or country clubs. This chapter does not apply to facilities intended for single family use or to a swimming pool or spa operated by a homeowners’ association representing seventy-two or fewer dwelling units if the association’s bylaws, which also apply to a rental agreement relative to any of the dwelling units, include an exemption from the requirements of this chapter, provide for inspection of the swimming pool or spa by an entity other than the department or local board of health, and assume any liability associated with operation of the swimming pool or spa. This chapter does not apply to a swimming pool or

spa used exclusively for therapy under the direct supervision of qualified medical personnel. To avoid duplication and promote coordination of inspection activities, the department may enter into agreements pursuant to chapter 28E with a local board of health to provide for inspection and enforcement in accordance with this chapter.

2001 Acts, ch 58, §6
Section amended

135L.4 Powers and duties.

The department is responsible for registering and regulating the operation of swimming pools, spas, and, notwithstanding chapter 89, swimming pool or spa water heaters. The department shall conduct seminars and training sessions, and disseminate information regarding health practices, safety measures, and operating procedures required under this chapter. The department may:

1. Inspect, at the time of installation and periodically thereafter, all swimming pools and spas for the purpose of detecting and eliminating health or safety hazards.

2. Establish minimum safety and sanitation criteria for the operation and use of swimming pools and spas.

3. Establish minimum qualifications for swimming pool, spa, and waterslide operators and lifeguards. Swimming pools operated by apartments, condominiums, country clubs, neighborhoods, or manufactured home communities or mobile home parks are exempt from requirements regarding lifeguards.

4. Establish and collect fees to defray the cost of administering this chapter. It is the intent of the general assembly that fees collected under this chapter be used to defray the cost of administering this chapter. However, the portion of fees needed to defray the costs of a local board of health in implementing this chapter shall be established by the local board of health. A fee imposed for the inspection of a swimming pool or spa shall not be collected until the inspection has actually been performed.

5. Adopt rules in accordance with chapter 17A for the implementation and enforcement of this chapter, and the establishment of fees. The department shall appoint an advisory committee composed of owners, operators, local officials, and representatives of the public to advise it in the formulation of appropriate rules.

6. Enter into agreements with a local board of health to implement the inspection and enforcement provisions of this chapter. The agreements shall provide that the fees established by the local board of health for inspection and enforcement shall be retained by the local board. However, inspection fees shall not be charged by the department for facilities which are inspected by third-party authorities. Third-party authorities shall be approved by the department. The department shall monitor and certify the inspection and enforcement programs of local boards of health and approved third-party authorities.

2001 Acts, ch 153, §16
Terminology change applied

CHAPTER 136

STATE BOARD OF HEALTH

136.3 Duties.

The state board of health shall be the policy making body for the Iowa department of public health and shall have the following powers and duties to:

1. Consider and study the entire field of legislation and administration concerning public health, hygiene and sanitation.

2. Advise the department relative to:

a. The causes of disease and epidemics, and the effect of locality, employment, and living conditions upon the public health.

b. The sanitary conditions in the educational, charitable, correctional, and penal institutions in the state.

c. Communicable and infectious diseases including zoonotic diseases, quarantine and isolation, venereal diseases, antitoxins and vaccines, housing, and vital statistics.

3. Establish policies governing the performance of the department in the discharge of any duties imposed on it by law.

4. Establish policies for the guidance of the director in the discharge of the director's duties.

5. Investigate the conduct of the work of the department, and for this purpose it shall have access at any time to all books, papers, documents, and records of the department.

6. Advise or make recommendations to the governor and general assembly relative to public health, hygiene, and sanitation.

7. Adopt, promulgate, amend, and repeal rules and regulations consistent with law for the protection of the public health and prevention of substance abuse, and for the guidance of the department. All rules which have been or are hereafter adopted by the department shall be subject to approval by the board. However, rules adopted by the commission on substance abuse for section 125.7, subsections 1 and 7, and rules adopted by the department pursuant to section 135.130 are not subject to approval by the board of health.

8. Act by committee, or by a majority of the board.

9. Keep minutes of the transactions of each session, regular or special, which shall be public records and filed with the department.

2001 Acts, ch 184, §8
Subsection 7 amended

CHAPTER 137F

FOOD ESTABLISHMENTS AND FOOD PROCESSING PLANTS

137F.1 Definitions.

For the purpose of this chapter:

1. *"Bed and breakfast home"* means a private residence which provides lodging and meals for guests, in which the host or hostess resides and in which no more than four guest families are lodged at the same time and which, while it may advertise and accept reservations, does not hold itself out to the public to be a restaurant, hotel, or motel, does not require reservations, and serves food only to overnight guests.
2. *"Commissary"* means a food establishment used for preparing, fabricating, packaging, and storage of food or food products for distribution and sale through the food establishment's own food establishment outlets.
3. *"Department"* means the department of inspections and appeals.
4. *"Director"* means the director of the department of inspections and appeals.
5. *"Farmers market"* means a marketplace which seasonally operates principally as a common market for fresh fruits and vegetables on a retail basis for off-the-premises consumption.
6. *"Food"* means a raw, cooked, or processed edible substance, ice, a beverage, an ingredient used or intended for use or sale in whole or in part for human consumption, or chewing gum.
7. *"Food code"* means the 1997 edition of the United States food and drug administration food code.
8. *"Food establishment"* means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption and includes a food service operation in a school, summer camp, residential service substance abuse treatment facility, halfway house substance abuse treatment facility, correctional facility operated by the department of corrections, the state training school, or the Iowa juvenile home. *"Food establishment"* does not include the following:
 - a. A food processing plant.
 - b. An establishment that offers only prepackaged foods that are nonpotentially hazardous.
 - c. A produce stand or facility which sells only whole, uncut fresh fruits and vegetables.
 - d. Premises which are a home food establishment pursuant to chapter 137D.
 - e. Premises which operate as a farmers market.
 - f. Premises of a residence in which food that is nonpotentially hazardous is sold for consumption off the premises to a consumer customer, if the food is labeled to identify the name and address of the person preparing the food and the common name of the food.
 - g. A kitchen in a private home where food is prepared or stored for family consumption or in a bed and breakfast home.
- h. A private home that receives catered or home-delivered food.
- i. Child care facilities and other food establishment facilities located in hospitals or health care facilities which are subject to inspection by other state agencies or divisions of the department.
- j. Supply vehicles, vending machine locations, or boardinghouses for permanent guests.
- k. Establishments exclusively engaged in the processing of meat and poultry which are licensed pursuant to section 189A.3.
- l. Premises covered by a current class "A" beer permit as provided in chapter 123.
- m. The premises of a residence in which honey is stored; prepared; packaged, including by placement in a container; labeled; or from which honey is distributed.
9. *"Food processing plant"* means a commercial operation that manufactures, packages, labels, or stores food for human consumption and does not provide food directly to a consumer. *"Food processing plant"* does not include any of the following:
 - a. A premises covered by a class "A" beer permit as provided in chapter 123.
 - b. A premises of a residence in which honey is stored; prepared; packaged, including by placement in a container; labeled; or from which honey is distributed.
10. *"Mobile food unit"* means a food establishment that is readily movable, which either operates up to three consecutive days at one location or returns to a home base of operation at the end of each day.
11. *"Municipal corporation"* means a political subdivision of this state.
12. *"Perishable food"* means potentially hazardous food.
13. *"Potentially hazardous food"* means a food that is natural or synthetic and is in a form capable of supporting the rapid and progressive growth of infectious or toxigenic microorganisms, or the growth and toxin production of clostridium botulinum. *"Potentially hazardous food"* includes an animal food that is raw or heat-treated, a food of plant origin that is heat-treated or consists of raw seed sprouts, cut melons, and garlic and oil mixtures. *"Potentially hazardous food"* does not include the following:
 - a. An air-cooled hard-boiled egg with shell intact.
 - b. A food with a water activity value of 0.85 or less.
 - c. A food with a hydrogen ion concentration (pH) level of 4.6 or below when measured at

twenty-four degrees Centigrade or seventy-five degrees Fahrenheit.

d. A food, in an unopened hermetically sealed container, that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution.

14. “*Pushcart*” means a non-self-propelled vehicle food establishment limited to serving nonpotentially hazardous foods or commissary-wrapped foods maintained at proper temperatures, or limited to the preparation and serving of frankfurters.

15. “*Regulatory authority*” means the department or a municipal corporation that has entered into an agreement with the director pursuant to section 137F.3 for authority to enforce this chapter in its jurisdiction.

16. “*Temporary food establishment*” means a food establishment that operates for a period of no more than fourteen consecutive days in conjunction with a single event or celebration.

17. “*Vending machine*” means a food establishment which is a self-service device that, upon insertion of a coin, paper currency, token, card, or key, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation.

18. “*Vending machine location*” means the physical site where a vending machine is installed and operated, including the storage and servicing areas on the premises that are used in conjunction with the vending machine.

2001 Acts, ch 81, §1, 2
Subsection 8, NEW paragraph m
Subsection 9 amended

137F.2 Adoption by rule.

The director shall adopt the food code with the following exceptions:

1. Places used by a nonprofit organization which engages in the serving of food not more than one day per calendar week and not on two or more consecutive days are exempt from this chapter.

2. A food processing plant shall comply with the “*Current Good Manufacturing Practices in Manufacturing, Processing, Packing, or Holding Human Food*” as found in the latest version of 21 C.F.R. pt. 110, and with rules adopted by the department to enforce the practices.

3. A vending machine commissary shall be inspected at least once each calendar year.

4. A vending machine which only dispenses prepackaged food that is nonpotentially hazardous is exempt from inspection and licensing, except upon receipt of a verified complaint by the regulatory authority.

5. 1-201.10(B)(31) and 3-403.10 shall be deleted.

6. 3-201.11(B) shall be amended to allow all of the following:

a. Food that is prepared by a home food estab-

lishment licensed under chapter 137D to be used or offered for sale.

b. Honey that is stored; prepared; packaged, including by placement in a container; or labeled on or distributed from the premises of a residence.

7. 3-301.11(B) shall be amended by deleting the section and replacing it with the following:

a. Except when washing fruits and vegetables, food employees should, to the extent practicable, avoid contact with exposed, ready-to-eat food with their bare hands. Where ready-to-eat food is routinely handled by employees, employers should adopt reasonable sanitary procedures to reduce the risk of the transmission of pathogenic organisms.

b. In seeking to minimize employees’ physical contact with ready-to-eat foods, no single method or device is universally practical or necessarily the most effective method to prevent the transmission of pathogenic organisms in all situations. As such, each public food service establishment shall review its operations to identify procedures where ready-to-eat food must be routinely handled by its employees and adopt one or more of the following sanitary alternatives, to be used either alone or in combination, to prevent the transmission of pathogenic organisms:

(1) The use of suitable food handling materials including, but not limited to, deli tissues, appropriate utensils, or dispensing equipment. Such materials must be used in conjunction with thorough hand washing practices in accord with subparagraph (3).

(2) The use of single-use gloves, for the purpose of preparing or handling ready-to-eat foods, shall be discarded when damaged or soiled or when the process of food preparation or handling is interrupted. Single-use gloves must be used in conjunction with thorough hand washing practices in accord with subparagraph (3).

(3) The use, pursuant to the manufacturer’s instructions, of anti-microbial soaps, with the additional optional use of anti-bacterial protective skin lotions or anti-microbial hand sanitizers, rinses, or dips. All such soaps, lotions, sanitizers, rinses, and dips must contain active topical anti-microbial or anti-bacterial ingredients, registered by the United States environmental protection agency, cleared by the United States food and drug administration, and approved by the United States department of agriculture.

(4) The use of such other practices, devices, or products that are found by the division to achieve a comparable level of protection to one or more of the sanitary alternatives in subparagraphs (1) through (3).

c. Regardless of the sanitary alternatives in use, each public food service establishment shall establish:

(1) Systematic focused education and training of all food service employees involved in the identi-

fied procedures regarding the potential for transmission of pathogenic organisms from contact with ready-to-eat food. The importance of proper hand washing and hygiene in preventing the transmission of illness, and the effective use of the sanitary alternatives and monitoring systems utilized by the public food service establishment, shall be reinforced. The content and duration of this training shall be determined by the manager of the public food service establishment.

(2) A monitoring system to demonstrate the proper and effective use of the sanitary alternatives utilized by the public food service establishment.

8. 3-501.16 shall be amended by adding the following: "Shell eggs shall be received and held at an ambient temperature not to exceed forty-five degrees Fahrenheit or seven degrees Celsius."

9. 3-502.12(A) shall be amended by adding the following: "Packaging of raw meat and raw poultry using an oxygen packaging method, with a thirty-day 'sell by' date from the date it was packaged, shall be exempt from having an HACCP Plan that contains the information required in this section and section 8-201.14."

10. 3-603.11 shall be amended by adding the

following: "The following standardized language shall be used on the required consumer advisory: 'Thoroughly cooking foods of animal origin such as beef, eggs, fish, lamb, pork, poultry, or shellfish reduces the risk of food-borne illness. Individuals with certain health conditions may be at higher risk if these foods are consumed raw or undercooked. Consult your physician or public health official for further information.'"

11. A carbonating device in a food establishment shall have a dual check valve which shall be installed so that it is upstream from the carbonating device and downstream from any copper in the water supply line.

12. 3-201.16(B) shall be amended to exclude wild morel mushrooms.

13. 3-501.17 shall be amended to provide that paragraphs (C) and (D) shall not apply to aged cheese.

14. 3-603.11 shall be amended so that the rule shall not apply to whole muscle red meats.

2001 Acts, ch 81, §3
 Subsection 6 amended
 Subsection 7, paragraph (1) redesignated as paragraph a
 Subsection 7, paragraph (2) redesignated as paragraph b and subparagraphs (a) – (d) redesignated as subparagraphs (1) – (4)
 Subsection 7, paragraph (3) redesignated as paragraph c and subparagraphs (a) and (b) redesignated as subparagraphs (1) and (2)

CHAPTER 139A

COMMUNICABLE AND INFECTIOUS DISEASES AND POISONINGS

139A.2 Definitions.

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

1. "Business" means and includes every trade, occupation, or profession.

2. "Care provider" means an individual who is trained and authorized by federal or state law to provide health care services or services of any kind in the course of the individual's official duties, for compensation or in a voluntary capacity, who is a health care provider, emergency medical care provider as defined in section 147A.1, fire fighter, or peace officer. "Care provider" also means an individual who renders emergency care or assistance in an emergency or due to an accident as described in section 613.17.

3. "Communicable disease" means any disease spread from person to person or animal to person.

4. "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 141A.1, 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 and prevention of the United States de-

partment of health and human services.

5. "Department" means the Iowa department of public health.

6. "Designated officer" means a person who is designated by a department, agency, division, or service organization to act as an infection control liaison officer.

7. "Exposure" means the risk of contracting disease as determined by the centers for disease control and prevention of the United States department of health and human services and adopted by rule of the department.

8. "Exposure-prone procedure" means a procedure performed by a health care provider which presents a recognized risk of percutaneous injury to the health care provider and if such an injury occurs, the health care provider's blood is likely to contact a patient's body cavity, subcutaneous tissues, or mucous membranes, or an exposure-prone procedure as defined by the centers for disease control and prevention of the United States department of health and human services.

9. "HBV" means hepatitis B virus.

10. "Health care facility" means a health care facility as defined in section 135C.1, an ambulatory surgical center, or a clinic.

11. "Health care provider" means a person licensed to practice medicine and surgery, osteo-

pathic medicine and surgery, osteopathy, chiropractic, podiatry, nursing, dentistry, optometry, or as a physician assistant, dental hygienist, or acupuncturist.

12. “*HIV*” means HIV as defined in section 141A.1.

13. “*Hospital*” means hospital as defined in section 135B.1.

14. “*Isolation*” means the separation of persons or animals presumably or actually infected with a communicable disease or who are disease carriers for the usual period of communicability of that disease in such places, marked by placards if necessary, and under such conditions as will prevent the direct or indirect conveyance of the infectious agent or contagion to susceptible persons.

15. “*Local board*” means the local board of health.

16. “*Local department*” means the local health department.

17. “*Placard*” means a warning sign to be erected and displayed on the periphery of a quarantine area, forbidding entry to or exit from the area.

18. “*Quarantinable disease*” means any communicable disease designated by rule adopted by the department as requiring quarantine or isolation to prevent its spread.

19. “*Quarantine*” means the limitation of freedom of movement of persons or animals that have been exposed to a communicable disease within specified limits marked by placards for a period of time equal to the longest usual incubation period of the disease in such manner as to prevent the spread of a communicable disease which affects people.

20. “*Reportable disease*” means any disease designated by rule adopted by the department requiring its occurrence to be reported to an appropriate authority.

21. “*Sexually transmitted disease or infection*” means a disease or infection as identified 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 and prevention of the United States department of health and human services.

22. “*Terminal cleaning*” means cleaning procedures defined in the isolation guidelines issued by the centers for disease control and prevention of the United States department of health and human services.

2001 Acts, ch 24, §29; 2001 Acts, ch 157, §1 – 3

NEW subsection 2 and former subsections 2 – 4 renumbered as 3 – 5

Subsection 6 stricken and former subsection 5 renumbered as 6

Subsections 7 and 14 amended

139A.19 Care provider notification.

1. *a.* Notwithstanding any provision of this chapter to the contrary, if a care provider sustains an exposure from an individual while rendering health care services or other services, the individ-

ual to whom the care provider was exposed is deemed to consent to a test to determine if the individual has a contagious or infectious disease and is deemed to consent to notification of the care provider of the results of the test, upon submission of an exposure report by the care provider to the hospital or other person specified in this section to whom the individual is delivered by the care provider. The exposure report form may be incorporated into the Iowa prehospital care report, the Iowa prehospital advanced care report, or a similar report used by an ambulance, rescue, or first response service or law enforcement agency.

b. The hospital or other person specified in this section to whom the individual is delivered shall conduct the test. If the individual is delivered by the care provider to an institution administered by the Iowa department of corrections, the test shall be conducted by the staff physician of the institution. If the individual is delivered by the care provider to a jail, the test shall be conducted by the attending physician of the jail or the county medical examiner. The sample and test results shall only be identified by a number and shall not otherwise identify the individual tested.

c. A hospital, institutions administered by the department of corrections, and jails shall have written policies and procedures for notification of a care provider under this section. The policies and procedures shall include designation of a representative of the care provider to whom notification shall be provided and who shall, in turn, notify the care provider. The identity of the designated representative of the care provider shall not be revealed to the individual tested. The designated representative shall inform the hospital, institution administered by the department of corrections, or jail of those parties who received the notification, and following receipt of this information and upon request of the individual tested, the hospital, institution administered by the department of corrections, or jail shall inform the individual of the parties to whom notification was provided.

d. Notwithstanding any other provision of law to the contrary, a care provider may transmit cautions regarding contagious or infectious disease information in the course of the care provider’s duties over the police radio broadcasting system under chapter 693 or any other radio-based communications system if the information transmitted does not personally identify an individual.

2. If the individual tested is diagnosed or confirmed as having a contagious or infectious disease, the hospital or other person conducting the test shall notify the care provider or the designated representative of the care provider who shall then notify the care provider.

3. The notification to the care provider shall advise the care provider of possible exposure to a particular contagious or infectious disease and

recommend that the care 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. The notification shall not include the name of the individual tested for the contagious or infectious disease unless the individual consents. If the care provider who sustained an exposure determines the identity of the individual diagnosed or confirmed as having a contagious or infectious disease, the identity of the individual shall be confidential information and shall not be disclosed by the care provider to any other person unless a specific written release is obtained from the individual diagnosed with or confirmed as having a contagious or infectious disease.

4. This section does not require or permit, unless otherwise provided, a hospital, health care provider, or other person to administer a test for the express purpose of determining the presence of a contagious or infectious disease, except that testing may be performed if the individual consents and if the requirements of this section are satisfied.

5. This section does not preclude a hospital or a health care provider from providing notification to a care provider under circumstances in which the hospital's or health care provider's policy provides for notification of the hospital's or health care provider's own employees of exposure to a contagious or infectious disease that is not life-threatening if the notice does not reveal a patient's name, unless the patient consents.

6. A hospital, health care provider, or other person participating in good faith in complying with provisions authorized or required under this section is immune from any liability, civil or criminal, which might otherwise be incurred or imposed.

7. 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 health care services or other services to which notification under this section applies.

8. A hospital, health care provider, or other person who is authorized to perform a test under this section or who fails to perform the test authorized under this section, is immune from any liability, civil or criminal, which might otherwise be incurred or imposed.

9. A hospital, health care provider, or other person who is authorized to perform a test under this section has no duty to perform the test authorized.

10. The department shall adopt rules pursuant to chapter 17A to administer this section. The department may determine by rule the contagious or infectious diseases for which testing is

reasonable and appropriate and which may be administered under this section.

11. The employer of a care provider who sustained an exposure under this section shall pay the costs of testing for the individual who is the source of the exposure and of the testing of the care provider, if the exposure was sustained during the course of employment. However, the department shall pay the costs of testing for the individual who is the source of the significant exposure and of the testing of the care provider who renders direct aid without compensation.

2001 Acts, ch 157, §4
Care provider notification of HIV infections, see §141A.8
Hepatitis testing and immunization of emergency responders; reimbursement; 2000 Acts, ch 1222, §5; 2001 Acts, ch 182, §5
Section stricken and rewritten

139A.22 Prevention of transmission of HIV or HBV to patients.

1. A hospital shall adopt procedures requiring the establishment of protocols applicable on a case-by-case basis to a health care provider determined to be infected with HIV or HBV who ordinarily performs exposure-prone procedures as determined by an expert review panel, within the hospital setting. The protocols established shall be in accordance with the recommendations issued by the centers for disease control and prevention of the United States department of health and human services. The expert review panel may be an established committee of the hospital. The procedures may provide for referral of the health care provider to the expert review panel established by the department pursuant to subsection 3 for establishment of the protocols. The procedures shall require reporting noncompliance with the protocols by a health care provider to the examining board with jurisdiction over the relevant health care providers.

2. A health care facility shall adopt procedures in accordance with recommendations issued by the centers for disease control and prevention of the United States department of health and human services, applicable to a health care provider determined to be infected with HIV or HBV who ordinarily performs or assists with exposure-prone procedures within the health care facility. The procedures shall require referral of the health care provider to the expert review panel established by the department pursuant to subsection 3.

3. The department shall establish an expert review panel to determine on a case-by-case basis under what circumstances, if any, a health care provider determined to be infected with HIV or HBV practicing outside the hospital setting or referred to the panel by a hospital or health care facility may perform exposure-prone procedures. If a health care provider determined to be infected with HIV or HBV does not comply with the determination of the expert review panel, the panel shall report the noncompliance to the examining

board with jurisdiction over the health care provider. A determination of an expert review panel pursuant to this section is a final agency action appealable pursuant to section 17A.19.

4. The health care provider determined to be infected with HIV or HBV, who works in a hospital setting, may elect either the expert review panel established by the hospital or the expert review panel established by the department for the purpose of making a determination of the circumstances under which the health care provider may perform exposure-prone procedures.

5. A health care provider determined to be infected with HIV or HBV shall not perform an exposure-prone procedure except as approved by the expert review panel established by the department pursuant to subsection 3, or in compliance with the protocol established by the hospital pursuant to subsection 1 or the procedures established by the health care facility pursuant to subsection 2.

6. The board of medical examiners, the board of physician assistant examiners, the board of podiatry examiners, the board of nursing, the board of dental examiners, and the board of optometry examiners shall require that licensees comply with the recommendations issued by the centers for disease control and prevention of the United States department of health and human services for preventing transmission of human immunodeficiency virus and hepatitis B virus to patients during exposure-prone invasive procedures, with the recommendations of the expert review panel established pursuant to subsection 3, with hospital protocols established pursuant to subsection 1, and with health care facility procedures established pursuant to subsection 2, as applicable.

7. Information relating to the HIV status of a health care provider is confidential and subject to the provisions of section 141A.9. A person who intentionally or recklessly makes an unauthorized disclosure of such information is subject to a civil penalty of one thousand dollars. The attorney gen-

eral 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 health care provider and all documentation shall be maintained in a confidential manner. Information relating to the HBV status of a health care provider is confidential and shall not be accessible to the public. Information regulated by this section, however, may be disclosed to members of the expert review panel established by the department or a panel established by hospital protocol under this section. The information may also be disclosed to the appropriate examining board by filing a report as required by this section. The examining board shall consider the report a complaint subject to the confidentiality provisions of section 272C.6. A licensee, upon the filing of a formal charge or notice of hearing by the examining board based on such a complaint, may seek a protective order from the board.

8. The expert review panel established by the department and individual members of the panel shall be immune from any liability, civil or criminal, for reasonable actions taken in the good faith performance of functions authorized or required by this section. A hospital, an expert review panel established by the hospital, and individual members of the panel shall be immune from any liability, civil or criminal, for reasonable actions taken in the good faith performance of functions authorized or required by this section. Complaints, investigations, reports, deliberations, and findings of the hospital and its panel with respect to a named health care provider suspected, alleged, or found to be in violation of the protocol required by this section constitute peer review records under section 147.135, and are subject to the specific confidentiality requirements and limitations of that section.

2001 Acts, ch 24, §30
See §139A.23
Subsection 3 amended

CHAPTER 141A

ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS)

141A.1 Definitions.

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

1. "*AIDS*" means acquired immune deficiency syndrome as defined by the centers for disease control and prevention of the United States department of health and human services.

2. "*AIDS-related conditions*" means the human immunodeficiency virus, or any other condition resulting from the human immunodeficiency virus infection.

3. "*Blinded epidemiological studies*" means studies in which specimens which were collected for other purposes are selected according to established criteria, are permanently stripped of personal identifiers, and are then tested.

4. "*Blood bank*" means a facility for the collection, processing, or storage of human blood or blood derivatives, including blood plasma, or from which or by means of which human blood or blood derivatives are distributed or otherwise made available.

5. “*Care provider*” means an individual who is trained and authorized by federal or state law to provide health care services or services of any kind in the course of the individual’s official duties, for compensation or in a voluntary capacity, who is a health care provider, emergency medical care provider as defined in section 147A.1, fire fighter, or peace officer. “*Care provider*” also means an individual who renders emergency care or assistance in an emergency or due to an accident as described in section 613.17.

6. “*Department*” means the Iowa department of public health.

7. “*Good faith*” means objectively reasonable and not in violation of clearly established statutory rights or other rights of a person which a reasonable person would know or should have known.

8. “*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.

9. “*Health facility*” means a hospital, health care facility, clinic, blood bank, blood center, sperm bank, laboratory organ transplant center and procurement agency, or other health care institution.

10. “*HIV*” means the human immunodeficiency virus identified as the causative agent of AIDS.

11. “*HIV-related test*” means a diagnostic test conducted by a laboratory approved pursuant to the federal Clinical Laboratory Improvements Act for determining the presence of HIV.

12. “*Infectious bodily fluids*” means bodily fluids capable of transmitting HIV infection as determined by the centers for disease control and prevention of the United States department of health and human services and adopted by rule of the department.

13. “*Legal guardian*” means a person appointed by a court pursuant to chapter 633 or an attorney in fact as defined in section 144B.1. In the case of a minor, “*legal guardian*” also means a parent or other person responsible for the care of the minor.

14. “*Nonblinded epidemiological studies*” means studies in which specimens are collected for the express purpose of testing for the HIV infection and persons included in the nonblinded study are selected according to established criteria.

15. “*Release of test results*” means a written authorization for disclosure of HIV-related test results which is signed and dated, and which specifies to whom disclosure is authorized and the time period during which the release is to be effective.

16. “*Sample*” means a human specimen obtained for the purpose of conducting an HIV-related test.

17. “*Significant exposure*” means the risk of contracting HIV infection by means of exposure to a person’s infectious bodily fluids in a manner ca-

pable of transmitting HIV infection as determined by the centers for disease control and prevention of the United States department of health and human services and adopted by rule of the department.

2001 Acts, ch 157, §5, 6

Subsection 5 stricken and rewritten

Subsection 7 stricken and former subsections 8 – 18 renumbered as 7 – 17

141A.8 Care provider notification.

1. *a.* Notwithstanding any provision of this chapter to the contrary, if a care provider sustains a significant exposure from an individual, the individual to whom the care provider was exposed is deemed to consent to a test to determine the presence of HIV infection in that individual and is deemed to consent to notification of the care provider of the HIV test results of the individual, upon submission of a significant exposure report by the care provider to the hospital or other person specified in this section to whom the individual is delivered by the care provider. The significant exposure report form may be incorporated into the Iowa prehospital care report, the Iowa prehospital advanced care report, or a similar report used by an ambulance, rescue, or first response service or law enforcement agency.

b. The hospital or other person specified in this section to whom the individual is delivered shall conduct the test. If the individual is delivered by the care provider to an institution administered by the Iowa department of corrections, the test shall be conducted by the staff physician of the institution. If the individual is delivered by the care provider to a jail, the test shall be conducted by the attending physician of the jail or the county medical examiner. The sample and test results shall only be identified by a number and no reports otherwise required by this chapter shall be made which otherwise identify the individual tested.

c. A hospital, institutions administered by the department of corrections, and jails shall have written policies and procedures for notification of a care provider under this section. The policies and procedures shall include designation of a representative of the care provider to whom notification shall be provided and who shall, in turn, notify the care provider. The identity of the designated representative of the care provider shall not be revealed to the individual tested. The designated representative shall inform the hospital, institution administered by the department of corrections, or jail of those parties who received the notification, and following receipt of this information and upon request of the individual tested, the hospital, institution administered by the department of corrections, or jail shall inform the individual of the parties to whom notification was provided.

2. *a.* If the test results are positive, the hospital or other person performing the test shall notify

the subject of the test and ensure the performance of counseling and reporting requirements of this chapter in the same manner as for an individual from whom actual consent was obtained.

b. If the HIV test results of the subject of the test are positive, the hospital or other person performing the test shall notify the care provider or the designated representative of the care provider who shall then notify the care provider who sustained the exposure.

c. The notification shall be provided as soon as is reasonably possible following determination that the HIV test results of the subject of the test are positive. The notification shall not include the name of the individual tested for HIV infection unless the individual provides a specific written release. If the care provider who sustained the significant exposure determines the identity of the individual tested, the identity of the individual shall be confidential information and shall not be disclosed by the care provider to any other person unless a specific written release is obtained from the individual tested.

3. This section does not require or permit, unless otherwise provided, a hospital, health care provider, or other person 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 this section are satisfied.

4. This section does not preclude a hospital or health care provider from providing notification to a care provider under circumstances in which the hospital's or health care provider's policy provides for notification of the hospital's or health care provider's own employees of exposure to HIV infection if the notice does not reveal a patient's name, unless the patient consents.

5. A hospital, 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.

6. A hospital's or health care provider'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 health care services or other services to the individual with the infection to which notification under this section applies.

7. Notwithstanding subsection 6, if, following discharge from or completion of care or treatment by a hospital, 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 care provider who submitted the report, the hospital shall provide a procedure for notifying the care provider.

8. A hospital, health care provider, or other person who is authorized to perform an HIV test under this section, who performs the HIV test in compliance with this section or who fails to perform an HIV test authorized under this section, is immune from any liability, civil or criminal, which might otherwise be incurred or imposed.

9. A hospital, health care provider, or other person who is authorized to perform a test under this section has no duty to perform the HIV test authorized.

10. The employer of a care provider who sustained a significant exposure under this section shall pay the costs of HIV testing for the individual who is the source of the significant exposure and of the testing and counseling of the care provider, if the significant exposure was sustained during the course of employment. However, the department shall pay the costs of HIV testing for the individual who is the source of the significant exposure and of the testing and counseling of the care provider who renders direct aid without compensation.

2001 Acts, ch 157, §7
Section stricken and rewritten

CHAPTER 142B

SMOKING PROHIBITIONS

142B.6 Civil penalty for violation — uniform application.

A person who smokes in those areas prohibited in section 142B.2, or who violates section 142B.4, shall pay a civil fine pursuant to section 805.8C, subsection 3, paragraph "a", for each violation.

Judicial magistrates shall hear and determine violations of this chapter. The civil penalties paid pursuant to this chapter shall be deposited in the county treasury.

Enforcement of this chapter shall be implemented in an equitable manner throughout the state. For the purpose of equitable and uniform implementation, application, and enforcement of state and local laws and regulations, the provisions of this chapter shall supersede any local law or regulation which is inconsistent with or conflicts with the provisions of this chapter.

2001 Acts, ch 137, §5
Internal reference change applied

CHAPTER 142C

UNIFORM ANATOMICAL GIFT ACT

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 university of Iowa college of medicine 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.

2001 Acts, ch 74, §3
Subsection 6 amended

142C.16 Anatomical gift public awareness advisory committee — established — duties.

1. The Iowa department of public health shall establish an anatomical gift public awareness advisory committee. Members shall include a representative of each of the following, appointed by the respective entity or that entity’s successor:

- a. A state organ procurement organization.
- b. The Iowa medical society.
- c. The Iowa hospital association.
- d. The osteopathic medical association.
- e. A bank or storage organization.

f. The Iowa chapter of the national association of social workers. The representative shall be a member of the association knowledgeable in anatomical gifts.

- g. The Iowa funeral directors association.
- h. The Iowa department of public health.
- i. The department of human services.
- j. The department of inspections and appeals.

2. Members shall serve staggered terms of two years. Appointments of members of the committee shall comply with sections 69.16 and 69.16A. Vacancies shall be filled by the original appointing authority and in the manner of the original appointment.

3. Members shall receive actual expenses incurred while serving in their official capacity and may also be eligible to receive compensation as provided in section 7E.6.

4. The committee shall annually select a chairperson from its membership. A majority of the members of the committee shall constitute a quorum.

5. The advisory committee shall assist the department in all of the following activities:

- a. Accepting and awarding grants to promote the donation of anatomical gifts.
- b. Establishing criteria for the application for and awarding of grants to promote the donation of anatomical gifts.

c. Examining the anatomical gifts system to identify improvements or enhancements to promote anatomical gifts.

d. Recommending legislation to improve state law regarding anatomical gifts.

2001 Acts, ch 74, §4
Subsection 1, paragraph c amended

CHAPTER 144

VITAL STATISTICS

Vital records modernization project; extension; temporary fee increase ending June 30, 2002; 93 Acts, ch 55, §1; 94 Acts, ch 1068, §8; 96 Acts, ch 1212, §17; 97 Acts, ch 203, §9, 22; 98 Acts, ch 1221, §9; 99 Acts, ch 201, §17, 20; 2000 Acts, ch 1222, §10, 17; 2001 Acts, ch 182, §13

144.46 Fee for copy of record.

The department by rule shall establish fees based on the average administrative cost which shall be collected by the state registrar or the county registrar for each certified copy or short form certification of certificates or records, or for a search of the files or records when no copy is made, or when no record is found on file. Fees collected by the state registrar and by the county registrar on behalf of the state under this section

shall be deposited in the general fund of the state. Fees collected by the county registrar pursuant to section 331.605, subsection 5, shall be deposited in the county general fund. A fee shall not be collected from a political subdivision or agency of this state.

Temporary fee increase through June 30, 2002, for vital records modernization project; 93 Acts, ch 55, §1; 94 Acts, ch 1068, §8; 96 Acts, ch 1212, §17; 97 Acts, ch 203, §9, 22; 98 Acts, ch 1221, §9; 99 Acts, ch 201, §17, 20; 2000 Acts, ch 1222, §10, 17; 2001 Acts, ch 182, §13

Section not amended; footnote revised

CHAPTER 145A

AREA HOSPITALS

145A.6 Petition of protest.

The plans formulated for the area hospital shall be deemed approved unless, within sixty days after the third and final publication of the order, a petition protesting the proposed plan containing the signatures of at least five percent of the registered voters of any political subdivision within the proposed merged area is filed with the respective officials of the protesting petitioners.

2001 Acts, ch 56, §8
Section amended

145A.7 Special election.

When a protesting petition is received, the offi-

cial receiving the petition shall call a special election of all registered voters of that political subdivision for the purpose of approving or rejecting the order setting out the proposed merger plan. The vote will be taken by ballot in the form provided by sections 49.43 to 49.47, and the election shall be initiated and held as provided in chapter 49. A majority vote of those registered voters voting at said special election shall be sufficient to approve the order and thus include the political subdivision within the merged area.

2001 Acts, ch 56, §9
Section amended

CHAPTER 147

GENERAL PROVISIONS, HEALTH-RELATED PROFESSIONS

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 words “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 “P. T.” 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 “P. T. A.” 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 with an earned doctoral degree in speech pathology obtained beyond a bachelor’s degree from an accredited school, college, or university, may use the suffix designating the degree, or the prefix “Doctor” or “Dr.” and add after the person’s name the words “speech pathologist”. An audiologist with an earned doctoral degree from an accredited school, college, or university, may use the suffix designating the degree, or the prefix “Doctor” or “Dr.” and add after the person’s name the word “audiologist”.

12. A bachelor social worker licensed under chapter 154C may use the words “licensed bachelor social worker” or the letters “L. B. S. W.” after the person’s name. A master social worker licensed under chapter 154C may use the words “licensed master social worker” or the letters “L. M. S. W.” after the person’s name. An independent social worker licensed under chapter 154C may use the words “licensed independent social worker”, or the letters “L. I. 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 phar-

maceutical 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 licensed under chapter 148E may use the words “licensed acupuncturist” after the person’s name.

19. A respiratory care practitioner licensed under chapter 152B and this chapter may use the title “respiratory care practitioner” or the letters “R. C. P.” after the person’s name.

20. An athletic trainer licensed under chapter 152D and this chapter may use the title “licensed athletic trainer” after the person’s name.

21. A registered nurse licensed under chapter 152 may use the words “registered nurse” or the letters “R. N.” after the person’s name. A licensed practical nurse licensed under chapter 152 may use the words “licensed practical nurse” or the letters “L. P. N.” after the person’s name.

22. 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”.

2001 Acts, ch 58, §7

NEW subsection 21 and former subsection 21 renumbered as 22

147.80 License — examination — fees.

An examining board shall set the fees for the examination of applicants, which fees shall be based upon the cost of administering the examinations. An examining board shall set the license fees and renewal fees required for any of the following based upon the cost of sustaining the board and the actual costs of licensing:

1. License to practice dentistry issued upon the basis of an examination given by the board of dental examiners, license to practice dentistry issued under a reciprocal agreement, resident dentist’s license, renewal of a license to practice dentistry.

2. License to practice pharmacy issued upon the basis of an examination given by the board of pharmacy examiners, license to practice pharmacy issued under a reciprocal agreement, renewal of a license to practice pharmacy.

3. License to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy and renewal of a license to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy.

4. Certificate to practice psychology or associate psychology issued on the basis of an examination given by the board of psychology examiners, or certificate to practice psychology or associate psychology issued under a reciprocity agreement or by endorsement, renewal of a certificate to practice psychology or associate psychology.

5. Application for a license to practice as a physician assistant, issuance of a license to practice as a physician assistant issued upon the basis of an examination given or approved by the board of physician assistant examiners, issuance of a license to practice as a physician assistant issued under a reciprocal agreement, renewal of a license to practice as a physician assistant, temporary license to practice as a physician assistant, registration of a physician assistant, temporary registration of a physician assistant, renewal of a registration of a physician assistant.

6. License to practice chiropractic issued on the basis of an examination given by the board of chiropractic examiners. License to practice chiropractic issued by endorsement or under a reciprocal agreement, renewal of a license to practice chiropractic.

7. License to practice podiatry issued upon the basis of an examination given by the board of podiatry examiners, license to practice podiatry issued under a reciprocal agreement, renewal of a license to practice podiatry.

8. License to practice physical therapy issued upon the basis of an examination given by the board of physical and occupational therapy examiners, license to practice physical therapy issued under a reciprocal agreement, renewal of a license to practice physical therapy.

9. License to practice as a physical therapist assistant issued on the basis of an examination given by the board of physical and occupational therapy examiners, license to practice as a physical therapist assistant issued under a reciprocal agreement, renewal of a license to practice as a physical therapist assistant.

10. For a license to practice optometry issued upon the basis of an examination given by the board of optometry examiners, license to practice optometry issued under a reciprocal agreement, renewal of a license to practice optometry.

11. License to practice dental hygiene issued upon the basis of an examination given by the board of dental examiners, license to practice dental hygiene issued under a reciprocal agreement, renewal of a license to practice dental hygiene.

12. License to practice mortuary science issued upon the basis of an examination given by the board of mortuary science examiners, license to practice mortuary science issued under a reciprocal agreement, renewal of a license to practice mortuary science.

13. License to practice nursing issued upon the basis of an examination given by the board of nursing; license to practice nursing based on an

endorsement from another state, territory or foreign country; renewal of a license to practice nursing.

14. A nurse who does not engage in nursing during the year succeeding the expiration of the license shall notify the board to place the nurse upon the inactive list and the nurse shall not be required to pay the renewal fee so long as the nurse remains inactive and so notifies the board. To resume nursing, the nurse shall notify the board and remit the renewal fee for the current period.

15. License to practice cosmetology arts and sciences issued upon the basis of an examination given by the board of cosmetology arts and sciences examiners, license to practice cosmetology arts and sciences under a reciprocal agreement, renewal of a license to practice cosmetology arts and sciences, temporary permit to practice as a cosmetology arts and sciences trainee, original license to conduct a school of cosmetology arts and sciences, renewal of license to conduct a school of cosmetology arts and sciences, original license to operate a salon, renewal of a license to operate a salon, original license to practice manicuring, renewal of a license to practice manicuring, annual inspection of a school of cosmetology arts and sciences, annual inspection of a salon, original cosmetology arts and sciences school instructor's license, and renewal of cosmetology arts and sciences school instructor's license.

16. License to practice barbering on the basis of an examination given by the board of barber examiners, license to practice barbering under a reciprocal agreement, renewal of a license to practice barbering, annual inspection by the department of inspections and appeals of barber school and annual inspection of barber shop, an original barber school license, renewal of a barber school license, transfer of license upon change of ownership of a barber shop or barber school, inspection by the department of inspections and appeals and an original barber shop license, renewal of a barber shop license, original barber school instructor's license, renewal of a barber school instructor's license.

17. License to practice speech pathology or audiology issued on the basis of an examination given by the board of speech pathology and audiology, or license to practice speech pathology or audiology issued under a reciprocity agreement, renewal of a license to practice speech pathology or audiology.

18. License to practice occupational therapy issued upon the basis of an examination given by the board of physical and occupational therapy examiners, license to practice occupational therapy issued under a reciprocal agreement, renewal of a license to practice occupational therapy.

19. License to assist in the practice of occupational therapy issued upon the basis of an examination given by the board of physical and occupational therapy examiners, license to assist in

the practice of occupational therapy issued under a reciprocal agreement, renewal of a license to assist in the practice of occupational therapy.

20. License to practice social work issued on the basis of an examination by the board of social work examiners, or license to practice social work issued under a reciprocity agreement, or renewal of a license to practice social work.

21. License to practice marital and family therapy issued upon the basis of an examination given by the board of behavioral science examiners, license to practice marital and family therapy issued under a reciprocal agreement, or renewal of a license to practice marital and family therapy.

22. License to practice mental health counseling issued upon the basis of an examination given by the board of behavioral science examiners, license to practice mental health counseling issued under a reciprocal agreement, or renewal of a license to practice mental health counseling.

23. License to practice dietetics issued upon the basis of an examination given by the board of dietetic examiners, license to practice dietetics issued under a reciprocal agreement, or renewal of a license to practice dietetics.

24. License to practice acupuncture, license to practice acupuncture under a reciprocal agreement, or renewal of a license to practice acupuncture.

25. License to practice respiratory care, license to practice respiratory care under a reciprocal license, or renewal of a license to practice respiratory care.

26. License to practice massage therapy, license to practice massage therapy under a reciprocal license, or renewal of a license to practice massage therapy.

27. License to practice athletic training, license to practice athletic training under a reciprocal license, or renewal of a license to practice athletic training.

28. Registration to practice as a dental assistant, registration to practice as a dental assistant under a reciprocal agreement, or renewal of registration to practice as a dental assistant.

29. For a certified statement that a licensee is licensed in this state.

30. Duplicate license, which shall be so designated on its face, upon satisfactory proof the original license issued by the department has been destroyed or lost.

The licensing and certification division shall prepare estimates of projected revenues to be generated by the licensing, certification, and examination fees of each board as well as a projection of the fairly apportioned administrative costs and rental expenses attributable to each board. Each board shall annually review and adjust its schedule of fees so that, as nearly as possible, projected revenues equal projected costs and any imbalance in revenues and costs in a fiscal year is offset in a

subsequent fiscal year.

2001 Acts, ch 24, §31; 2001 Acts, ch 58, §8
Subsections 13 and 16 amended

147.91 Publications.

The department shall have available for each profession the following information:

1. The law regulating the practice of the profession.

2. The rules of the Iowa department of public health and the department of inspections and appeals relative to licenses.

3. The rules of the examining board relative to examinations.

Such information shall be supplied to any person applying for the same. The department may, to the extent feasible, make the information described in this section available by electronic means, including, but not limited to, access to the documents through the internet.

2001 Acts, ch 58, §9
Section 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 reason-

ably 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.

See also §154.1, 155A.4

Moratorium until June 30, 2002, on imposition of sanctions for use of certain automated prescription drug dispensing systems; 2001 Acts, ch 182, §5, 14

Section not amended; footnote added

CHAPTER 147A

EMERGENCY MEDICAL CARE — TRAUMA CARE

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.

2001 Acts, ch 74, §5
Unnumbered paragraph 1 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 or any other entity in which health care is ordinarily provided only when under the direct supervision, as defined by rules adopted pursuant to chapter 17A, of a physician, 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 or other entity in which health care is ordinarily provided only when under the direct supervision of a physician, as a member of an authorized ambulance, rescue, or first response service, or in an individual capacity, 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 or other entity in which health care is ordinarily provided only when under the direct supervision of a physician, as a member of an authorized ambulance, rescue, or first response service, or in an individual capacity, to perform nonlifesaving procedures for which those individuals have been certified 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, including when the registered nurse is not acting in the capacity of a physician designee, and where the procedure may be immediately abandoned without risk to the patient.

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.

2001 Acts, ch 58, §10
Subsection 2, paragraph d amended

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.

2001 Acts, ch 74, §6
Subsection 1, paragraphs i and j amended

CHAPTER 148C

PHYSICIAN ASSISTANTS

148C.4 Services performed by assistants.

A physician assistant may perform medical services when the services are rendered under the supervision of the physician or physicians specified in the physician assistant license approved by the board. A trainee may perform medical services when the services are rendered within the scope of an approved program. For the purposes of this section, *“medical services rendered under the supervision of the physician or physicians specified in the physician assistant license approved by the*

board” includes making a pronouncement of death for a patient whose death is anticipated if the death occurs in a licensed hospital, a licensed health care facility, a Medicare-certified home health agency, or a Medicare-certified hospice program or facility, with notice of the death to a physician and in accordance with the directions of a physician.

2001 Acts, ch 113, §1
Section amended

CHAPTER 148D

RESIDENT PHYSICIANS

148D.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. *“Affiliated”* means established or developed by the college of medicine.

2. *“College of medicine”* means the university of Iowa college of medicine.

3. *“Family practice unit”* means the community facility or classroom for the teaching of ambula-

tory health care skills within a residency program.

4. The *“medical profession”* means medical and osteopathic physicians.

5. *“Residency program”* means a community based family practice residency education program presently in existence or established under this chapter.

2001 Acts, ch 74, §7
Subsection 2 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.

c. Make the pronouncement of death for a patient whose death is anticipated if the death occurs in a licensed hospital, a licensed health care facility, a Medicare-certified home health agency, or a Medicare-certified hospice program or facility, with notice of the death to a physician and in accordance with any directions of a physician.

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. Make the pronouncement of death for a patient whose death is anticipated if the death occurs in a licensed hospital, a licensed health care facility, a Medicare-certified home health agency, or a Medicare-certified hospice program or facility, with notice of the death to a physician and in accordance with any directions of a physician.

f. Apply to the abilities enumerated in paragraphs “a” through “e” of this subsection scientific principles, including the principles of nursing skills and of biological, physical, and psychosocial sciences.

2001 Acts, ch 113, §2 – 4

Subsection 4, NEW paragraph c

Subsection 6, NEW paragraph e and former paragraph e redesignated as f

Subsection 6, paragraph f amended

CHAPTER 154

OPTOMETRY

154.6 Expiration and renewal of licenses.

Every license to practice optometry shall expire in multiyear intervals as determined by the board. Application for renewal of such license shall be made in writing to the Iowa department of public health at least thirty days prior to the expiration date, accompanied by the required renewal fee, and the licensee shall submit evidence of attendance of continuing education in this field.

2001 Acts, ch 58, §11
Section amended

154.7 Notice of expiration.

Notice of expiration of the license to practice op-

tometry shall be given by the Iowa department of public health to all certificate holders by mailing the notice to the last known address of such licensee at least sixty days prior to the expiration date, and the notice shall contain a statement of the educational program attendance requirement and the amount of legal fee required as a condition to the renewal of the license. Subject to the provisions of this chapter, the license shall be renewed without examination.

2001 Acts, ch 58, §12
Section amended

CHAPTER 154A

HEARING AIDS

154A.1 Definitions.

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

1. *“Board”* means the board of examiners for the licensing and regulation of hearing aid dispensers.

2. *“Department”* means the Iowa department of public health.

3. *“Dispense”* or *“sell”* means a transfer of title or of the right to use by lease, bailment, or any other means, but excludes a wholesale transaction with a distributor or dispenser, and excludes the temporary, charitable loan or educational loan of a hearing aid without remuneration.

4. *“Hearing aid”* means a wearable instrument or device designed for or offered for the purpose of aiding or compensating for impaired human hearing, and any parts, attachments, or accessories, including earmold, but excluding batteries and cords.

5. *“Hearing aid dispenser”* means any person engaged in the fitting, dispensing, and the sale of hearing aids and providing hearing aid services or maintenance, by means of procedures stipulated by this chapter or the board.

6. *“Hearing aid fitting”* means the measurement of human hearing by any means for the purpose of selections, adaptations, and sales of hearing aids, and the instruction and counseling pertaining thereto, and demonstration of techniques in the use of hearing aids, and the making of earmold impressions as part of the fitting of hearing aids.

7. *“License”* means a license issued by the state under this chapter to hearing aid dispensers.

8. *“Person”* means a natural person.

9. *“Temporary permit”* means a permit issued while the applicant is in training to become a licensed hearing aid dispenser.

2001 Acts, ch 58, §18
Terminology change applied

154A.2 Establishment of board.

A board for the licensing and regulation of hearing aid dispensers is established. The board shall consist of three licensed hearing aid dispensers and two members who are not licensed hearing aid dispensers who shall represent the general public. Members, who shall be residents of the state of Iowa, shall be appointed by the governor, subject to confirmation by the senate. A licensed member shall be actively employed as a hearing aid dispenser and shall have been so engaged for five years preceding appointment, the last two of which shall have been in Iowa. Hearing aid dispensers appointed to the initial board shall have not less than five years' experience and shall fulfill the qualifications relating to experience for licensure as provided in this chapter.

No more than two members of the board shall be employees of, or dispensers principally, for the same hearing aid manufacturer.

Professional associations or societies composed of licensed hearing aid dispensers may recommend the names of potential board members to the governor, but the governor shall not be bound by the recommendations. A board member shall not be required to be a member of any professional association or society composed of licensed hearing aid dispensers.

2001 Acts, ch 58, §18
Confirmation, see §2.32
Terminology change applied

154A.4 Duties of the board.

Members of the board shall annually elect a chairperson and a secretary-treasurer from their membership. The board shall prepare examinations drawn from comparable examinations given in other states which license hearing aid dispensers, direct the department in administering the provisions of this chapter, determine who is eligible for licensure, suspend or revoke licenses or temporary permits for cause, and promulgate rules for the administration of the provisions of this chapter pursuant to chapter 17A within the limits of funds appropriated to the board.

2001 Acts, ch 58, §18
Terminology change applied

154A.9 Applications.

Applications for licensure or for a temporary permit shall be on forms prescribed and furnished by the board and shall not require that a recent photograph of the applicant be attached to the application form. An applicant shall not be ineligible for certification because of age, citizenship, sex, race, religion, marital status or national origin although the application may require citizenship information. The board may consider the past felony record of an applicant only if the felony conviction relates directly to the practice of fitting or selection and sale of hearing aids. Character references may be required, but shall not be obtained from licensed hearing aid dispensers.

2001 Acts, ch 58, §18
Terminology change applied

154A.13 Temporary permit.

A person who has not been employed as a hearing aid dispenser prior to January 1, 1975, may obtain a temporary permit from the department upon completion of the application accompanied by the written verification of employment from a licensed hearing aid dispenser. The department shall issue a temporary permit for one year which shall not be renewed or reissued. The fee for issuance of the temporary permit shall be set by the board pursuant to section 154A.17. The temporary permit entitles an applicant to engage in the fitting or selection and sale of hearing aids under the supervision of a person holding a valid license.

2001 Acts, ch 58, §18
Terminology change applied

154A.14 Reciprocity.

If the board determines that another state or jurisdiction has requirements equivalent to or higher than those provided in this chapter, the department may issue a license by reciprocity to applicants who hold valid certificates or licenses to dispense and fit hearing aids in the other state or jurisdiction. An applicant for a license by reciprocity is not required to take a qualifying examination, but is required to pay the license fee as provided in section 154A.17. The holder of a license

of reciprocity is registered in the same manner as the holder of a regular license. Fees, grounds for renewal, and procedures for the suspension and revocation of license by reciprocity are the same as for a regular license.

2001 Acts, ch 58, §13
Section amended

154A.18 Display of license.

A person shall not engage in business as a hearing aid dispenser, or display a sign, or in any other way advertise or claim to be a hearing aid dispenser after January 1, 1975, unless the person holds a valid license issued by the department as provided in this chapter. The license shall be conspicuously posted in the person's office or place of business. The department shall issue duplicate licenses to valid license holders operating more than one office. A license confers upon the holder the right to operate a business as a hearing aid dispenser.

2001 Acts, ch 58, §18
Terminology change applied

154A.19 Exceptions.

This chapter shall not prohibit a corporation, partnership, trust, association, or other organization maintaining an established business address from engaging in the business of selling or offering for sale hearing aids at retail without a license if it employs only licensed hearing aid dispensers in the direct fitting or selection and sale of hearing aids. Such an organization shall file annually with the board a list of all licensed hearing aid dispensers and persons holding temporary permits directly or indirectly employed by it. Such an organization shall also file with the board a statement on a form approved by the board that the organization submits itself to the rules and regulations of the board and the provisions of this chapter which the department deems applicable.

This chapter shall not apply to a person who engages in the practices covered by this chapter if this activity is part of the academic curriculum of an accredited institution of higher education, or part of a program conducted by a public or charitable institution, or nonprofit organization, unless the institution or organization also dispenses or sells hearing aids.

This chapter shall not prevent any person from engaging in practices covered by this chapter, provided the person, or organization employing the person, does not dispense or sell hearing aids.

2001 Acts, ch 58, §18
Terminology change applied

154A.20 Rights of purchaser.

1. A hearing aid dispenser shall deliver, to each person supplied with a hearing aid, a receipt which contains the licensee's signature and shows the licensee's business address and the number of the license, together with specifications as to the make, model, and serial number of the hearing aid

furnished, and full terms of sale clearly stated, including the date of consummation of the sale of the hearing aid. If a hearing aid is sold which is not new, the receipt and the container must be clearly marked "used" or "reconditioned", with the terms of guarantee, if any.

2. The receipt shall bear the following statement in type no smaller than the largest used in the body copy portion of the receipt:

"The purchaser has been advised that any examination or representation made by a licensed hearing aid dispenser in connection with the fitting or selection and selling of this hearing aid is not an examination, diagnosis, or prescription by a person licensed to practice medicine in this state and therefore, must not be regarded as medical opinion or advice."

3. Whenever any of the following conditions are found to exist either from observations by the licensed hearing aid dispenser or person holding a temporary permit or on the basis of information furnished by a prospective hearing aid user, the hearing aid dispenser or person holding a temporary permit shall, prior to fitting and selling a hearing aid to any individual, suggest to that individual in writing that the individual's best interests would be served if the individual would consult a licensed physician specializing in diseases of the ear, or if no such licensed physician is available in the community, then to a duly licensed physician:

- a. Visible congenital or traumatic deformity of the ear.
- b. History of, or active drainage from the ear within the previous ninety days.
- c. History of sudden or rapidly progressive hearing loss within the previous ninety days.
- d. Acute or chronic dizziness.
- e. Unilateral hearing loss of sudden or recent onset within the previous ninety days.
- f. Significant air-bone gap (greater than or equal to 15dB ANSI 500, 1000 and 2000 Hz. average).
- g. Obstruction of the ear canal, either by structures of undetermined origin, such as foreign bodies, impacted cerumen, redness, swelling, or tenderness from localized infections of the otherwise normal ear canal.

4. A copy of the written recommendation shall be retained by the licensed hearing aid dispenser for the period of seven years. A person receiving the written recommendation who elects to purchase a hearing aid shall sign a receipt for the same, and the receipt shall be kept with the other papers retained by the licensed hearing aid dispenser for the period of seven years. Nothing in this section required to be performed by a licensed hearing aid dispenser shall mean that the hearing aid dispenser is engaged in the diagnosis of illness

or the practice of medicine or any other activity prohibited by this chapter.

5. No hearing aid shall be sold by any individual licensed under this bill to a person twelve years of age or younger, unless within the preceding six months a recommendation for a hearing aid has been made by a physician specializing in otolaryngology. A replacement of an identical hearing aid within one year shall be an exception to this requirement.

6. A licensed hearing aid dispenser shall, upon the consummation of a sale of a hearing aid, keep and maintain records in the dispenser's office or place of business at all times and each such record shall be kept and maintained for a seven-year period. These records shall include:

- a. Results of test techniques as they pertain to fitting of the hearing aids.
- b. A copy of the written receipt and the written recommendation.

2001 Acts, ch 58, §18
Terminology change applied

154A.21 Notice of address.

A licensee or person holding a temporary permit shall notify the department in writing of the address of the place where the licensee or permittee engages or intends to engage in business as a hearing aid dispenser. The department shall keep a record of the place of business of licensees and persons holding temporary permits.

Any notice required to be given by the department to a licensee shall be adequately served if sent by certified mail to the address of the last place of business recorded.

2001 Acts, ch 58, §18
Terminology change applied

154A.23 Complaints.

Any person wishing to make a complaint against a licensee or holder of a temporary permit shall file a written statement with the board within twelve months from the date of the action upon which the complaint is based. If the board determines that the complaint alleges facts which, if proven, would be cause for the suspension or revocation of the license of the licensee or holder of a temporary permit, it shall make an order fixing a time and place for a hearing and requiring the licensee or holder of a temporary permit complained against to appear and defend. The order shall contain a copy of the complaint, and the order and copy of the complaint shall be served upon the licensee or holder of a temporary permit at least twenty days before the date set for hearing, either personally or as provided in section 154A.21. Continuance or adjournment of a hearing date may be made for good cause. At the hearing the licensee or holder of a temporary permit may be represented by counsel. The licensee or holder of a temporary permit and the board may take depositions in advance of hearing and after service of the complaint, and either may compel the attendance of

witnesses by subpoenas issued by the board. The board shall issue such subpoenas at the request of a licensee or holder of a temporary permit. Either party taking depositions shall give at least five days' written notice to the other party of the time and place of such depositions, and the other party may attend, with counsel, if desired, and cross-examine.

If the board determines from the evidence and proofs submitted that the licensee or holder of a temporary permit is guilty of violating any of the provisions of this chapter, or any of the regulations promulgated by the board pursuant to this chapter, the department shall, within thirty days after the hearing, issue an order refusing to issue or renew, or revoking or suspending, as the case may be, the hearing aid dispenser's license or temporary permit. The order shall include the findings of fact and the conclusions of law made by the board and counsel. A copy of the order shall be sent to the licensee or holder of a temporary permit by registered mail. The records of the department shall reflect the action taken by the board on the charges, and the department shall preserve a record of the proceedings in a manner similar to that used by courts of record in this state.

The final order of the board in the proceedings may be appealed to the district court of the county where the licensee or holder of a temporary permit resides, or in which the licensed hearing aid dispenser's principal place of business is located.

The department shall send a copy of the complaint and a copy of the board's final order to the attorney general for purposes of information in the event the licensee or holder of a temporary permit pursues a court appeal and for consideration as to whether the violations are flagrant enough to justify prosecution. The attorney general and all county attorneys shall assist the department in the enforcement of the provisions of this chapter.

2001 Acts, ch 58, §18
Terminology change applied

154A.24 Suspension or revocation.

The board may revoke or suspend a license or temporary permit permanently or for a fixed period for any of the following causes:

1. Conviction of a felony. The record of conviction, or a certified copy, shall be conclusive evidence of conviction.
2. Procuring a license or temporary permit by fraud or deceit.
3. Unethical conduct in any of the following forms:
 - a. Obtaining a fee or making a sale by fraud or misrepresentation.
 - b. Knowingly employing, directly or indirectly, any suspended or unregistered person to perform any work covered by this chapter.
 - c. Using or causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insigni-

nia or any other representation, however disseminated or published, which is misleading, deceptive, or untruthful.

d. Advertising a particular model or type of hearing aid for sale when purchasers or prospective purchasers responding to the advertisement cannot purchase the advertised model or type, if it is established that the purpose of the advertisement is to obtain prospects for the sale of a different model or type than that advertised.

e. Representing that the service or advice of a person licensed to practice medicine, or one who is certificated as a clinical audiologist by the board of examiners of speech pathology and audiology or its equivalent, will be used or made available in the fitting or selection, adjustment, maintenance, or repair of hearing aids when that is not true, or using the words "doctor", "clinic", "clinical audiologist", "state approved", or similar words, abbreviations or symbols which tend to connote the medical or other professions, except where the title "certified hearing aid audiologist" has been granted by the national hearing aid society, or that the hearing aid dispenser has been recommended by this state or the board when such is not accurate.

f. Habitual intemperance.

g. Permitting another person to use the license or temporary permit.

h. Advertising a manufacturer's product or using a manufacturer's name or trademark to imply a relationship with the manufacturer that does not exist.

i. Directly or indirectly giving or offering to give, or permitting or causing to be given, money or anything of value to a person who advises another in a professional capacity, as an inducement to influence the person or cause the person to influence others to purchase or contract to purchase products sold or offered for sale by a hearing aid dispenser, or to influence others to refrain from dealing in the products of competitors.

j. Conducting business while suffering from a contagious or infectious disease.

k. Engaging in the fitting or selection and sale of hearing aids under a false name or alias, with fraudulent intent.

l. Selling a hearing aid to a person who has not been given tests utilizing appropriate established procedures and instrumentation in fitting or selection of hearing aids, except in cases of selling replacement hearing aids of the same make or model within one year of the original sale.

m. Gross incompetence or negligence in fitting or selection and selling of hearing aids.

n. Using an advertisement or other representation which has the effect of misleading or deceiving purchasers or prospective purchasers into the belief that any hearing aid or device, or part or accessory thereof, is a new invention or involves a new mechanical or scientific principle when such is not the fact.

o. Representing, directly or by implication,

that a hearing aid utilizing bone conduction has certain specified features, such as the absence of anything in the ear or leading to the ear, or the like, without disclosing clearly and conspicuously that the instrument operates on the bone conduction principle, and that in many cases of hearing loss, this type of instrument may not be suitable.

p. Stating or implying that the use of a hearing aid will restore normal hearing or preserve hearing or prevent or retard progressions of hearing impairment or any other false or misleading claim regarding the use or benefit of a hearing aid.

q. Representing or implying that a hearing aid is or will be “custom-made”, “made to order”, “prescription made”, or in any other sense especially fabricated for an individual person when such is not the case.

r. Violating any of the provisions of section 714.16.

s. Failure to place in an advertisement, if an advertisement does not include the words “hearing aid” in the title of the business which is advertising, the qualifying words in the same size type, “for the purpose of fitting, selection, adaption, and sale of hearing aids”. However, the qualifying words are not required if the advertisement includes the words, “hearing test”, “hearing evaluation”, “free hearing test”, “free hearing evalua-

tion”, “hearing measurement”, or “free hearing measurement”, and the title of the business which is advertising appears in the advertisement and includes the words “hearing aid”.

t. Such other acts or omissions as the board may determine to be unethical conduct.

2001 Acts, ch 58, §18
Terminology change applied

154A.25 Prohibitions.

A person shall not:

1. Sell, barter, or offer to sell or barter a license or temporary permit.

2. Purchase or procure by barter a license or temporary permit with intent to use it as evidence of the holder’s qualifications to engage in business as a hearing aid dispenser.

3. Alter a license or temporary permit with fraudulent intent.

4. Use or attempt to use as a valid license a license or temporary permit which has been purchased, fraudulently obtained, counterfeited, or materially altered.

5. Willfully make a false statement in an application for a license or temporary permit or for renewal of a license or temporary permit.

2001 Acts, ch 58, §18
Terminology change applied

CHAPTER 155A

PHARMACY

155A.33 Delegation of technical functions.

A pharmacist may delegate technical dispensing functions to pharmacy technicians, but only if the pharmacist is physically present to verify the accuracy and completeness of the patient’s pre-

scription prior to the delivery of the prescription to the patient or the patient’s representative.

Moratorium until June 30, 2002, on imposition of sanctions for use of certain automated prescription drug dispensing systems; 2001 Acts, ch 182, §5, 14

Section not amended; footnote added

CHAPTER 156

FUNERAL DIRECTING, MORTUARY SCIENCE, AND CREMATION

See chapter 523A for sales of cemetery and funeral merchandise and funeral services

CHAPTER 158

BARBERING

158.9 Barbershop licenses.

A barbershop shall not operate unless the owner has obtained a license issued by the department. The owner shall apply to the department on forms prescribed by the board. The department shall perform a sanitary inspection of each barbershop biennially and may perform a sanitary inspection

of a barbershop prior to the issuance of a license. An inspection of a barbershop shall also be conducted upon receipt of a complaint by the department.

The application shall be accompanied by the biennial license fee determined pursuant to section 147.80. The license is valid for two years and

may be renewed.

A licensed barber school at which students practice barbering is exempt from licensing as a barbershop.

2001 Acts, ch 58, §14

Unnumbered paragraph 3 stricken

158.11 Barber assistants. Repealed by 2001 Acts, ch 58, § 17.

CHAPTER 159

DEPARTMENT OF AGRICULTURE AND LAND STEWARDSHIP

159.10 Iowa book of agriculture. Repealed by 2001 Acts, ch 129, § 7.

159.30 Laboratory division — packaging determination — promotion. Repealed by 2001 Acts, ch 129, § 7.

159.15 Biennial report. Repealed by 2001 Acts, ch 129, § 7.

159.37 Special quality grains electronic bulletin board. Repealed by 2001 Acts, ch 129, § 7.

CHAPTER 161A

SOIL AND WATER CONSERVATION

161A.15 Notice and hearing.

Within thirty days after a petition has been filed with the soil and water conservation district commissioners, they shall fix a date, hour, and place for a hearing and direct the secretary to cause notice to be given to the owners of each tract of land, or lot, within the proposed subdistrict as shown by the transfer books of the auditor's office, and to each lienholder, or encumbrancer, of any such lands as shown by the county records, and to all other persons whom it may concern, and without naming individuals all actual occupants of land in the proposed subdistrict, of the pendency and purpose of the petition and that all objections to establishment of the subdistrict for any reason must be made in writing and filed with the secretary of the soil and water conservation district at, or before, the time set for hearing. The soil and water conservation district commissioners shall consider and determine whether the operation of the subdistrict within the defined boundaries as proposed is desirable, practicable, feasible, and of necessity in the interest of health, safety, and public welfare. All interested parties may attend the hearing and

be heard. The soil and water conservation district commissioners may for good cause adjourn the hearing to a day certain which shall be announced at the time of adjournment and made a matter of record. If the soil and water conservation district commissioners determine that the petition meets the requirements set forth in this section and in section 161A.5, they shall declare that the subdistrict is duly organized and shall record such action in their official minutes together with an appropriate official name or designation for the subdistrict.

2001 Acts, ch 24, §32
Section amended

161A.18 Certification.

Following the entry in the official minutes of the soil and water conservation district commissioners of the creation of the subdistrict, the commissioners shall certify this fact on a separate form, authentic copies of which shall be recorded with the county recorder of each county in which any portion of the subdistrict lies, and with the division of soil conservation.

2001 Acts, ch 24, §33
Section amended

CHAPTER 161D

LOESS HILLS AND SOUTHERN IOWA DEVELOPMENT AND CONSERVATION

161D.8 Annual report — audit.

1. The authority shall submit to the depart-

ment of management, the legislative fiscal bureau, and the division of soil conservation of the

department of agriculture and land stewardship, on or before December 31 annually, a report including information regarding all of the following:

- a. Its operations and accomplishments.
- b. Its budget, receipts, and actual expenditures during the previous fiscal year, in accordance with classifications it establishes for its operating and capital accounts.
- c. Its assets and liabilities at the end of the previous fiscal year and the status of reserve, special, and other funds.
- d. A statement of its proposed and projected activities.
- e. Recommendations to the governor and the general assembly, as deemed necessary.
- f. Any other information deemed necessary.

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

3. The fund shall be subject to an annual audit by the auditor of state.

2001 Acts, ch 185, §45
NEW section

161D.9 and 161D.10 Reserved.

161D.13 Annual report — audit.

1. The southern Iowa development and con-

servation authority shall submit to the department of management, the legislative fiscal bureau, and the division of soil conservation of the department of agriculture and land stewardship, on or before December 31 annually, a report including information regarding all of the following:

- a. Its operations and accomplishments.
- b. Its budget, receipts, and actual expenditures during the previous fiscal year, in accordance with classifications it establishes for its operating and capital accounts.
- c. Its assets and liabilities at the end of the previous fiscal year and the status of reserve, special, and other funds.
- d. A statement of its proposed and projected activities.
- e. Recommendations to the governor and the general assembly, as deemed necessary.
- f. Any other information deemed necessary.

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

3. The southern Iowa development and conservation fund shall be subject to an annual audit by the auditor of state.

2001 Acts, ch 185, §46
NEW section

CHAPTER 163

INFECTIOUS AND CONTAGIOUS DISEASES AMONG ANIMALS

SUBCHAPTER I GENERAL PROVISIONS

163.1 Powers of department.

The department shall administer and enforce the provisions of this chapter and rules adopted by the department pursuant to this chapter. In administering the provisions of this chapter, the department shall have power to do all of the following:

1. Make all necessary rules for the suppression and prevention of infectious and contagious diseases among animals within the state.
2. Provide for quarantining animals affected with infectious or contagious diseases, or that have been exposed to such diseases, whether with or without the state.
3. Determine and employ the most efficient and practical means for the prevention, suppression, control, and eradication of contagious or infectious diseases among animals.
4. Establish, maintain, enforce, and regulate quarantine and other measures relating to the movements and care of diseased animals.
5. Provide for the disinfection of suspected

yards, buildings, and articles, and the destruction of such animals as may be deemed necessary.

6. Enter any place where any animal is at the time located, or where it has been kept, or where the carcass of such animal may be, for the purpose of examining it in any way that may be necessary to determine whether it was or is infected with any contagious or infectious disease.

7. Regulate or prohibit the arrival in, departure from, and passage through the state, of animals infected with or exposed to any contagious disease; and in case of violation of any such regulation or prohibition, to detain any animal at the owner's cost.

8. Regulate or prohibit the bringing of animals into the state, which, in its opinion, for any reason, may be detrimental to the health of animals in the state.

9. Cooperate with and arrange for assistance from the United States department of agriculture in performing its duties under this chapter.

10. Impose civil penalties as provided in this chapter. The department may refer cases for prosecution to the attorney general.

2001 Acts, ch 136, §1
Unnumbered paragraph 1 amended

163.2 Infectious and contagious diseases.

For the purpose of this chapter, infectious and contagious diseases shall be deemed to embrace glanders, farcy, maladie du coit (dourine), anthrax, foot and mouth disease, scabies, hog cholera, swine dysentery, tuberculosis, brucellosis, vesicular exanthema, scrapie, rinderpest, ovine foot rot, or any other communicable disease so designated by the department.

As used in this chapter, “*foot and mouth disease*” means a virus of the family picornaviridae, genus aphthovirus, including any immunologically distinct serotypes.

2001 Acts, ch 170, §1, 3
NEW unnumbered paragraph 2

163.6 Slaughter facilities — blood samples.

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

a. “*Department*” means the department of agriculture and land stewardship or the United States department of agriculture.

b. “*Slaughtering establishment*” means a person engaged in the business of slaughtering animals, if the person is an establishment subject to the provisions of chapter 189A which slaughters animals for meat food products as defined in section 189A.2.

2. The department may require that samples of blood be collected from animals at a slaughtering establishment in order to determine if the animals are infected with an infectious or contagious disease, according to rules adopted by the department of agriculture and land stewardship. Upon approval by the department, the collection shall be performed by either of the following:

a. A slaughtering establishment under an agreement executed by the department and the slaughtering establishment.

b. A person authorized by the department.

An authorized person collecting samples shall have access to areas where the animals are confined in order to collect blood samples. The department shall notify the slaughtering establishment in writing that samples of blood must be collected for analysis. The notice shall be provided in a manner required by the department.

3. In carrying out this section, a person authorized by the department to collect blood samples from animals as provided in this section shall have the right to enter and remain on the premises of the slaughtering establishment in the same manner and on the same terms as a meat inspector authorized by the department, including the right to access facilities routinely available to employees of the slaughtering establishment such as toilet and lavatory facilities, lockers, cafeterias, areas reserved for work breaks or dining, and storage facilities. The slaughtering establishment shall pro-

vide a secure area for the permanent storage of equipment used to collect blood, an area reserved for collecting the blood, including the storage of blood during the collection, and a refrigerated area used to store blood samples prior to analysis. The area reserved for collecting the blood shall be adjacent to the area where the animals are killed, unless the authorized person and the slaughtering establishment select another area. The department is not required to compensate a slaughtering establishment for allowing a person authorized by the department to carry out this section.

2001 Acts, ch 136, §2
Subsection 4 stricken

163.18 False representation.

A person shall not knowingly make a false representation about the shipment of an animal that is being or will be made, with the intent to avoid or prevent the animal’s inspection that is conducted in order to determine whether the animal is free from disease.

2001 Acts, ch 136, §3
Section amended

163.21 Penalties. Repealed by 2001 Acts, ch 136, § 10. See § 163.61.

163.23 False certificates of health.

A veterinarian shall not issue a certificate of health for an animal knowing that the animal described in the certificate of health was not the same animal from which tests were made as a basis for issuing the certificate. A veterinarian shall not otherwise falsify a certificate of health.

2001 Acts, ch 136, §4
Section amended

163.24 Using false certificate.

A person shall not conduct a transaction to import, export, or transport an animal within this state or sell or offer for sale an animal if the person uses a certificate of health in connection with the transaction knowing that the animal described in the certificate of health was not the animal from which tests were made as a basis for issuing the certificate of health. A person shall not otherwise use an altered or otherwise false certificate in connection with such transaction.

2001 Acts, ch 136, §5
Section amended

163.25 Altering certificate.

A person shall not remove or alter a tag or mark of identification appearing on an animal, tested or being tested for disease, if the tag or mark of identification is authorized by the department or inserted by any qualified veterinarian. A person shall not alter a certificate of vaccination issued by a person authorized to vaccinate the animal.

2001 Acts, ch 136, §6
Section amended

SUBCHAPTER II
FEEDING GARBAGE TO ANIMALS

163.26 Definition.

For the purposes of this subchapter, “garbage” means putrescible animal and vegetable wastes resulting from the handling, preparation, cooking, and consumption of foods, including animal carcasses or parts, and includes all waste material, by-products of a kitchen, restaurant, hotel, or slaughterhouse, every refuse accumulation of animal, fruit, or vegetable matter, liquids or otherwise, except grain not consumed, that is collected from hog sales pen floors in public stockyards and fed under the control of the department of agriculture and land stewardship. Animals or parts of animals, which are processed by slaughterhouses or rendering establishments, and which as part of the processing are heated to not less than 212 degrees F. for thirty minutes, are not garbage for purposes of this chapter.

2001 Acts, ch 136, §9
Terminology change applied

163.29 Penalty. Repealed by 2001 Acts, ch 136, § 10. See § 163.61.

SUBCHAPTER III
MOVEMENT OF SWINE

163.31 Falsification of certificates — penalty. Repealed by 2001 Acts, ch 136, § 10. See § 163.61.

SUBCHAPTER IV
IDENTIFICATION OF SWINE
CONSIGNED FOR SLAUGHTER

163.34 Purpose.

The purpose of this subchapter is to establish a positive means of identifying all boars, sows and stags purchased for slaughter on their arrival at the first point of concentration after such sale. The purpose of such swine identification program is to facilitate eradication of swine diseases.

2001 Acts, ch 136, §9
Terminology change applied

SUBCHAPTER V
BREEDING BULLS

163.40 Definitions.

As used in this subchapter:

1. “Breeding bull” means a male animal of dairy or beef bovine genus used for breeding purposes.
2. “Lease” when used as a verb means to physi-

cally deliver a breeding bull pursuant to a lease agreement.

3. “Licensee” means a person required to obtain a license pursuant to section 163.41.

2001 Acts, ch 136, §9
Terminology change applied

163.41 License required.

A person shall not engage in the business of leasing a breeding bull without having obtained a license from the department and registering each breeding bull as provided in this subchapter. An annual license may be obtained from the department upon application and payment of a ten-dollar fee. Each license shall expire on the first of July following the date of issue. An application shall be made on a form provided by the department and shall contain the name of the person engaged in the business of leasing breeding bulls as lessor, the address of such business, the registration number of each breeding bull, and a description as to breed, color and other distinguishing marks, leased as lessor, and such other information as the secretary of agriculture may specify by rule promulgated pursuant to chapter 17A.

For the purposes of this section, a person is engaged in the business of leasing a breeding bull within this state as lessor if the person leases any breeding bull to an Iowa resident more than once in any calendar year for a fee.

2001 Acts, ch 136, §9
Terminology change applied

163.45 Denial, revocation or suspension of a license.

The department of agriculture and land stewardship may refuse to issue or renew and may suspend or revoke a license issued under this subchapter for any violation of the provisions of this subchapter or rules adopted relating to the leasing of a breeding bull.

2001 Acts, ch 136, §9
Terminology change applied

163.47 Exemptions.

The provisions of this subchapter shall not apply to 4-H or future farmers of America organizations engaged in breeding programs.

2001 Acts, ch 136, §9
Terminology change applied

163.48 through 163.50 Reserved.

SUBCHAPTER VI
FOOT AND MOUTH DISEASE

163.51 Security measures.

1. The department may establish security measures in order to control outbreaks of foot and mouth disease in this state, including by providing for the prevention, suppression, and eradication of foot and mouth disease. In administering and en-

forcing this section, the department may adopt rules and shall issue orders in a manner consistent with sound veterinary principles and federal law for the control of outbreaks of the disease. The department may implement the security measures by doing any of the following:

a. If the department determines that an animal is infected with or exposed to foot and mouth disease, or the department suspects that an animal is so infected or exposed, the department may provide for all of the following:

(1) The quarantine, condemnation, or destruction of the animal. The department may establish quarantined areas and regulate activities in the quarantined areas, including movement or relocation of animals or other property within, into, or from the quarantined areas. This section does not authorize the department to provide for the destruction of personal property other than an animal.

(2) The inspection or examination of the animal's premises in order to perform an examination or test to determine whether the animal is or was infected or exposed or whether the premises is contaminated. The department may take a blood or tissue sample of any animal on the premises.

(3) The compelling of a person who is the owner or custodian of the animal to provide information regarding the movement or relocation of the animal or the vaccination status of the animal or the herd where the animal originates. The department may issue a subpoena for relevant testimony or records as defined in section 516E.1. In the case of a failure or refusal of the person to provide testimony or records, the district court upon application of the department or the attorney general acting upon behalf of the department, may order the person to show cause why the person should not be held in contempt. The court may order the person to provide testimony or produce the record or be punished for contempt as if the person refused to testify before the court or disobeyed a subpoena issued by the court.

b. The department may provide for the cleaning and disinfection of real or personal property if the department determines that the property is contaminated with foot and mouth disease or suspects that the property is contaminated with foot and mouth disease.

2. *a.* If the department determines that there is a suspected outbreak of foot and mouth disease in this state, the department shall immediately notify all of the following:

(1) The governor or a designee of the governor. The notification shall contain information regarding actions being implemented or recommended in order to determine if the outbreak is genuine and measures to control a genuine outbreak.

(2) The administrative unit of the United States department of agriculture responsible for controlling outbreaks in this state.

b. If the department confirms an outbreak of foot and mouth disease in this state, the department shall cooperate with the governor; federal agencies, including the United States department of agriculture; and state agencies, including the emergency management division of the department of public defense, in order to provide the public with timely and accurate information regarding the outbreak. The department shall cooperate with organizations representing agricultural producers in order to provide all necessary information to agricultural producers required to control the outbreak.

3. The department shall cooperate with federal agencies, including the United States department of agriculture, other state agencies and law enforcement entities, and agencies of other states. Other state agencies and law enforcement entities shall assist the department.

4. *a.* To the extent that an animal's owner would not otherwise be compensated, section 163.15 shall apply to the owner's loss of any animal destroyed under this section.

b. Upon the request of the executive council, the department shall develop and submit a plan to the executive council that compensates an owner of property, other than an animal, that is inadvertently destroyed by the department as a result of the department's regulation of activities in a quarantined area. The plan shall not be implemented without the approval of at least three members of the executive council. The payment of the compensation under the plan shall be made in the same manner as provided in section 163.15. The owner may submit a claim for compensation prior to the plan's implementation. The executive council may apply the plan retroactively, but not earlier than June 1, 2001.

5. Nothing in this section limits the department's authority to regulate animals or premises under other provisions of state law, including this chapter.

2001 Acts, ch 170, §2, 3
NEW section

163.52 through 163.60 Reserved.

SUBCHAPTER VII

PENALTIES — INJUNCTIVE RELIEF

163.61 Civil penalties.

1. The department shall establish, by rule, civil penalties which may be administratively or judicially assessed. The attorney general shall cooperate with the department in the assessment and collection of civil penalties.

2. *a.* Except as provided in paragraph "b", a person violating a provision of this chapter, or a rule adopted pursuant to this chapter, shall be subject to a civil penalty of at least one hundred

dollars but not more than one thousand dollars. In the case of a continuing violation, each day of the continuing violation is a separate violation. However, a person shall not be subject to a civil penalty totaling more than twenty-five thousand dollars.

b. Notwithstanding the provisions of paragraph “*a*”, a person who falsifies a health certificate, veterinarian inspection certificate, or certificate of inspection shall be subject to a civil penalty of not more than five thousand dollars for each reference to an animal falsified on the certificate. However, a person who falsifies a certificate of inspection issued pursuant to chapter 166D shall be subject to a civil penalty as provided in this section or section 166D.16, but not both. A person shall not be subject to a civil penalty totaling more than twenty-five thousand dollars for falsifying a certificate, regardless of the number of animals falsified on the certificate.

3. Moneys collected from civil penalties shall be deposited into the general fund of the state.

2001 Acts, ch 136, §7
NEW section

163.62 Injunctive relief.

The department or the attorney general acting on behalf of the department may apply to the district court for injunctive relief in order to restrain a person from acting in violation of this chapter. In order to obtain injunctive relief, the department shall not be required to post a bond or prove the absence of an adequate remedy at law unless the court for good cause otherwise orders. The court may order any form of prohibitory or mandatory relief that is appropriate under principles of equity, including but not limited to issuing a temporary or permanent restraining order.

2001 Acts, ch 136, §8
NEW section

CHAPTER 165A

PARATUBERCULOSIS CONTROL

165A.1 Definitions.

1. “*Concentration point*” means a location or facility where cattle are assembled for purposes of sale or resale for feeding, breeding, or slaughtering, and where contact may occur between groups of cattle 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.

2. “*Department*” means the department of agriculture and land stewardship.

3. “*Infected*” means infected with paratuberculosis as provided in section 165A.3.

4. “*Paratuberculosis*” means a disease caused by the bacterium mycobacterium paratuberculosis, and which is also referred to as Johne’s disease.

5. “*Separate and apart*” means to hold cattle so that neither the cattle nor organic material originating from the cattle has physical contact with other animals.

6. “*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 that has been inspected by the state.

2001 Acts, ch 101, §1
NEW section

165A.2 Administration and enforcement.

The provisions of this chapter, including departmental rules adopted pursuant to this chapter, shall be administered and enforced by the department. The department may assess and collect civil penalties against persons in violation of this chap-

ter as provided in section 165A.5. The attorney general may assist the department in the enforcement of this chapter.

2001 Acts, ch 101, §2
NEW section

165A.3 Determination of infection.

The department shall adopt rules providing methods and procedures to determine whether cattle are infected, which may include detection and analysis of paratuberculosis using techniques approved by the United States department of agriculture.

2001 Acts, ch 101, §3
NEW section

165A.4 Infected cattle.

The owner of infected cattle shall mark the cattle by punching the letter “C” through the right ears of the cattle as required by the department. A person shall not sell infected cattle other than directly to a slaughtering establishment, or to a concentration point for sale directly to a slaughtering establishment, for immediate slaughter. Cattle marked with a letter “C” that are kept at a concentration point must be kept separate and apart.

2001 Acts, ch 101, §4
NEW section

165A.5 Enforcement — penalty.

1. A person violating a provision of this chapter or any rule adopted pursuant to this chapter shall be subject to a civil penalty of at least one hundred dollars but not more than one thousand dollars. The proceeding to assess a civil penalty shall be conducted as a contested case proceeding

under chapter 17A.

2. In addition to any other remedies provided, the department may file a petition in the district court seeking an injunction restraining any person from violating provisions of this chapter including a rule adopted pursuant to this chapter.

3. This section does not prevent a person from commencing a civil cause of action based on any right that the person may assert under statute or common law.

2001 Acts, ch 101, §5; 2001 Acts, ch 176, §62
NEW section

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 certified by the department to receive, feed, and move or relocate infected swine as provided in section 166D.10B.

3. “*Approved premises permit*” means a permit issued by the department necessary for a person to own and operate an approved premises.

4. “*Breeding swine*” means swine over six months of age.

5. “*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 or to the relocation 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.

6. “*Cleanup plan*” means a herd cleanup plan or feeder pig cooperator herd cleanup plan as provided in section 166D.8.

7. “*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.

8. “*Cull swine*” means mature swine fed for purposes of direct slaughter. However, “*cull swine*” does not include swine kept for purposes of breeding or reproduction.

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, and includes a modified-live differentiable vaccine.

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 weighs one hundred pounds or less.

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 swine fed for purposes of direct slaughter, including feeder pigs and cull swine. However, “*feeder swine*” does not include swine kept for purposes of breeding or reproduction.

20. “*Fixed concentration point*” means a concentration point which is a permanent location where swine are assembled for purposes of sale and movement to a slaughtering establishment as provided in section 166D.12.

21. “*Herd*” means a group of swine as established by departmental rule.

22. “*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.

23. “*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.

24. “*Infected*” means infected with pseudorabies as determined by an epidemiologist whose diagnosis is supported by test results.

25. “*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.

26. “*Inspection service*” means the animal and plant health inspection service, United States department of agriculture.

27. “*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.

28. “*Isowean feeder pig*” means a feeder pig that weighs twenty pounds or less.

29. “*Known infected herd*” means a herd in which swine have been determined by an epidemiologist to be infected.

30. “*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.

31. “*Livestock*” means swine, cattle, sheep,

goats, horses, ostriches, rheas, or emus.

32. “*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.

33. “*Move*” or “*movement*” means the same as defined in section 163.30.

34. “*Noninfected herd*” means a herd which is one of the following:

a. A qualified pseudorabies negative herd.

b. A pseudorabies monitored herd.

c. A herd in which the animals have been individually tested negative within the past thirty days.

d. 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.

e. A qualified differentiable negative herd.

35. “*Nonvaccinate*” means a swine which has not been exposed to a pseudorabies vaccine.

36. “*Pseudorabies*” means the contagious, infectious, and communicable disease of livestock and other animals known as Aujeszky’s disease, mad itch, or infectious bulbar paralysis.

37. “*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.

38. “*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.

39. “*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.

40. “*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, as provided in section 166D.9.

41. “*Reaction*” means a result determined by an approved laboratory procedure designed to recognize pseudorabies virus infection or a nondifferentiable vaccinated animal.

42. “*Relocate*” or “*relocation*” means the same as defined in section 163.30.

43. “*Relocation record*” means a record as maintained by the owner of swine in a form and containing information as required by the rules adopted by the department, which indicates a relocation of swine as provided in section 166D.10.

44. “*Restricted movement*” means swine which are moved or relocated as provided in section 166D.10A.

45. “*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.

46. “*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.

47. “*Stage II county*” means a county designated by the department as in stage II of the national pseudorabies eradication program.

48. “*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.

49. “*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.

50. “*Transportation certificate*” means a written document evidencing that the movement or relocation of swine complies with the requirements of this chapter, and which may be a transportation certificate as provided in chapter 172B, or another document approved by the department, including but not limited to one or more types of forms covering different circumstances, as prescribed by the department.

2001 Acts, ch 24, §34
Subsection 2 amended

166D.12 Concentration points.

A person shall not move swine through a concentration point, except as provided in this section.

1. For swine from a noninfected herd, the swine may be moved through any concentration point. All of the following shall apply:

a. Breeding swine must be kept separate and apart from feeder pigs.

b. Breeding swine must be sold first.

2. *a.* For swine other than swine from a noninfected herd, the swine shall not be moved through a concentration point other than a fixed concentration point, as required by the department. A fixed concentration point shall be used exclusively for the following:

(1) The movement of livestock other than swine.

(2) The immediate movement of swine to a slaughtering establishment.

b. A fixed concentration point shall never be used for the movement of swine other than to a slaughtering establishment.

c. A person shall not move swine subject to restricted movement to or from a fixed concentration point or receive swine subject to restricted movement at a fixed concentration point, unless the swine is moved and received in compliance with section 166D.10A.

d. Livestock, other than swine, moved to the fixed concentration point must be kept separate and apart.

e. If an infected swine, exposed swine, or swine from a herd of unknown status is moved through a fixed concentration point, the owner of the fixed concentration point shall post and maintain a sign on the premises of the fixed concentration point. The sign must be posted in a conspicuous place clearly visible to persons moving livestock through the fixed concentration point. The notice shall appear in black letters a minimum of one inch high and in the following form:

NOTICE

THIS FACILITY MAY SELL SWINE WHICH
HAVE BEEN EXPOSED TO PSEUDORABIES.
HOWEVER, ALL SWINE ARE MOVED
IMMEDIATELY TO SLAUGHTER.

2001 Acts, ch 24, §35
Subsection 2, paragraph c amended

CHAPTER 169

VETERINARY PRACTICE

169.5 Board of veterinary medicine.

1. The governor shall appoint, subject to confirmation by the senate, a board of five individuals, three of whom shall be licensed veterinarians and two of whom shall not be licensed veterinarians, but shall be knowledgeable in the area of animal husbandry and who shall represent the general public. The representatives of the general public shall not prepare, grade or otherwise administer examinations to applicants for license to practice veterinary medicine. The board shall be known as the Iowa board of veterinary medicine. Each licensed veterinarian shall be actively engaged in veterinary medicine and shall have been

so engaged for a period of five years immediately preceding appointment, the last two of which shall have been in Iowa. A member of the board shall not be employed by or have any material or financial interest in any wholesale or jobbing house dealing in supplies, equipment or instruments used or useful in the practice of veterinary medicine. The person designated as the state veterinarian shall serve as secretary of the board.

Professional associations or societies composed of licensed veterinarians may recommend the names of potential board members to the governor, but the governor is not bound by the recommendations.

2. The members of the board shall be appointed for a term of three years except the terms of the members of the initial board shall be rotated in such a manner that at least one member shall retire each year and a successor be appointed. The term of each member shall commence and end as provided by section 69.19. Members shall serve no more than three terms or nine years total, whichever is less.

3. Any vacancy in the membership of the board caused by death, resignation, removal, or otherwise, shall be filled for the period of the unexpired term in the same manner as original appointments.

4. Members of the board shall, in addition to necessary traveling and other expenses, set their own per diem compensation at a rate not exceeding the per diem specified in section 7E.6 for each day actually engaged in the discharge of their duties including compensation for the time spent traveling to and from the place of conducting the examination and for a reasonable number of days for the preparation of examination and the reading of papers, in addition to the time actually spent in conducting examinations, within the limits of funds appropriated to the board.

5. The department shall furnish the board with all articles and supplies required for the public use and necessary to enable the board to perform the duties imposed upon it by law. Such articles and supplies shall be obtained by the department in the same manner in which the regular supplies for the department are obtained, and the department shall assess the costs to the board for such articles and supplies. The board shall also reimburse the department for direct and indirect administrative costs incurred in issuing and renewing the licenses.

6. The board shall meet at least once each year as determined by the board. Other necessary meetings may be called by the president of the board by giving proper notice. Except as provided, a majority of the board constitutes a quorum. Meetings shall be open and public except that the board may meet in closed session to prepare, approve, administer, or grade examinations, or to deliberate the qualifications of an applicant for license or the disposition of a proceeding to discipline a licensed veterinarian.

7. At its annual meeting, the board shall organize by electing a president and such other officers as may be necessary. Officers of the board serve for terms of one year and until a successor is elected, without limitation on the number of terms an officer may serve. The president shall serve as chairperson of board meetings.

The duties of the board shall include carrying on the correspondence of the board, keeping permanent accounts and records of all receipts and disbursements by the board and of all board proceedings, including the disposition of all applications for license, and keeping a register of all persons

currently licensed by the board. All board records shall be open to public inspection during regular office hours.

At the end of each fiscal year, the president and secretary shall submit to the governor a report on the transactions of the board, including an account of moneys received and disbursed.

8. The board shall set the fees by rule for a license to practice veterinary medicine issued upon the basis of the examination. It shall also set the fees by rule for a license granted on the basis of reciprocity, a renewal of a license to practice veterinary medicine, a certified statement that a licensee is licensed to practice in this state, and an issuance of a duplicate license when the original is lost or destroyed. The fee shall be based upon the administrative costs of sustaining the board and shall include, but shall not be limited to, the following:

a. Per diem, expenses, and travel of board members.

b. Costs to the department for administration of this chapter.

9. Upon a three-fifths vote, the board may:

a. Examine and determine the qualifications and fitness of applicants for a license to practice veterinary medicine in the state.

b. Issue, renew, or deny issuance or renewal of licenses and temporary permits to practice veterinary medicine in this state.

c. Establish and publish annually a schedule of fees for licensing and registration of veterinarians. The fee schedule shall be based on the board's anticipated financial requirements for the year.

d. Conduct investigations for the purpose of discovering violations of this chapter or grounds for disciplining licensed veterinarians.

e. Hold hearings on all matters properly brought before the board and administer oaths, receive evidence, make the necessary determinations, and enter orders consistent with the findings. The board may require by subpoena the attendance and testimony of witnesses and the production of papers, records, or other documentary evidence and commission depositions. An administrative law judge may be appointed pursuant to section 17A.11 to perform those functions which properly repose in an administrative law judge.

f. Employ full-time or part-time personnel, professional, clerical, or special, as are necessary to effectuate the provisions of this chapter.

g. Appoint from its own membership one or more members to act as representatives of the board at any meeting within or without the state where such representation is deemed desirable.

h. Bring proceedings in the courts for the enforcement of this chapter or any regulations made pursuant to this chapter.

i. Adopt, amend, or repeal rules relating to the standards of conduct for, testing of, and revocation or suspension of certificates issued to veterinary assistants. However, a certificate shall not be sus-

pended or revoked by less than a two-thirds vote of the entire board in a proceeding conducted in compliance with section 17A.12.

j. Adopt, amend, or repeal all rules necessary for its government and all regulations necessary to carry into effect the provision of this chapter, including the establishment and publication of standards of professional conduct for the practice of veterinary medicine.

The powers enumerated above are granted for the purpose of enabling the board to effectively supervise the practice of veterinary medicine and are to be construed liberally to accomplish this objective.

10. A person who provides veterinary medical services, owns a veterinary clinic, or practices in this state shall obtain a certificate from the board and be subject to the same standards of conduct, as provided in this chapter and rules adopted by the board, as apply to a licensed veterinarian, unless the board determines that the same standards of conduct are inapplicable. The board shall issue, renew, or deny a certificate; adopt rules relating to the standards of conduct; and take disciplinary action against the person, including suspension or revocation of a certificate, in accordance with the procedures established in section

169.14. Certification fees shall be established by the board pursuant to subsection 9, paragraph “j”. Fees shall be established in an amount sufficient to fully offset the costs of certification pursuant to this subsection. For the fiscal year beginning July 1, 2001, and ending June 30, 2002, the department shall retain fees collected to administer the program of certifying veterinary clinics and the fees retained are appropriated to the department for the purposes of this subsection. For the fiscal year beginning July 1, 2001, and ending June 30, 2002, notwithstanding section 8.33, fees which remain unexpended at the end of the fiscal year shall not revert to the general fund of the state but shall be available for use for the following fiscal year to administer the program. For the fiscal year beginning July 1, 2002, and succeeding fiscal years, certification fees shall be deposited in the general fund of the state and are appropriated to the department to administer the certification provisions of this subsection. This subsection shall not apply to an animal shelter, as defined in section 162.2, that provides veterinary medical services to animals in the custody of the shelter.

2000 Acts, ch 1183, §1, 3; 2001 Acts, ch 24, §70, 74
2000 amendment adding new subsection 10 takes effect July 1, 2001;
2000 Acts, ch 1183, §3
NEW subsection 10

CHAPTER 169A

MARKING AND BRANDING OF LIVESTOCK

169A.4 Recording — fee.

A person desiring to adopt a brand shall forward to the secretary a brand application on forms approved by the secretary and providing for the desired brand, together with a recording fee of twenty-five dollars. Upon receipt, the secretary shall file the application and fee, unless the brand is of record of another person or conflicts with or closely resembles the brand of another person. If the secretary determines that such brand is of record or conflicts with or closely resembles the brand of another person, the secretary shall not record it but shall return the facsimile and fee to the forwarding person. However, the secretary shall renew a conflicting brand if the brand was originally recorded prior to July 1, 1996, and the brand is renewed as provided in section 169A.13. The department may notify each owner of a conflicting brand that the owner may record a nonconflicting brand. The power of examination, approval, acceptance, or rejection shall be vested in the secretary. The secretary shall file all brands offered for record pending the examination provided for in this section. The secretary shall make such examination as promptly as possible. If the brand is accepted, the brand's ownership shall vest in the person re-

ording it from the date of filing.

2001 Acts, ch 183, §20
Section amended

169A.12 Fees to general fund. Repealed by 2001 Acts, ch 183, § 23.

169A.13 Renewal of brand and fee.

Each owner of a brand which is recorded pursuant to section 169A.4 shall renew the brand each fifth year after originally recording the brand and pay a renewal fee. The amount of the renewal fee is twenty-five dollars. 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 renew the brand and pay the renewal fee within six months after 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 years following date of forfeiture.

2001 Acts, ch 183, §21
Section amended

169A.13A Branding administration fund.

1. A branding administration fund is created in the state treasury under the control of the de-

partment. The fund is composed of moneys collected in fees as provided in this chapter, moneys appropriated by the general assembly, and moneys available to and obtained or accepted by the department from the United States or private sources for placement in the fund.

2. The fund is subject to warrants written by the director of revenue and finance, drawn upon the written requisition of the department.

3. Moneys in the fund are appropriated to the department for the exclusive purpose of support-

ing the administration of this chapter by the department.

4. The department may adopt rules pursuant to chapter 17A to administer this section.

5. Section 8.33 shall not apply to moneys in the fund. Notwithstanding section 12C.7, moneys earned as income, including as interest, from the fund shall remain in the fund until expended as provided in this section.

2001 Acts, ch 183, §22
NEW section

CHAPTER 172E

DAIRY CATTLE SOLD FOR SLAUGHTER

172E.1 Definitions.

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

1. “*Dairy cattle*” means cattle belonging to a breed that is used to produce milk for human consumption, including but not limited to Holstein and Jersey breeds.

2. “*Livestock*” means the same as defined in section 717.1.

3. “*Livestock market*” means any place where livestock are assembled from two or more sources for public auction, private sale, or sale on a commission basis, which is under state or federal supervision, including a livestock auction market, if such livestock are kept in the place for ten days or less.

4. “*Packer*” means a person who is engaged in the business of slaughtering livestock or receiving, purchasing, or soliciting livestock for slaughter. As used in this chapter, “*packer*” includes an agent of the packer engaged in buying or soliciting livestock for slaughter on behalf of a packer.

2001 Acts, ch 101, §6; 2001 Acts, ch 176, §63
NEW section

172E.2 Marketing practices — dairy cattle sold for slaughter.

1. If a livestock market accepts dairy cattle

upon express written condition that the dairy cattle are to be moved directly to slaughter, the dairy cattle shall be segregated with other livestock to be moved directly to slaughter until sold to a packer. A person shall not knowingly sell the dairy cattle to a purchaser other than to a packer at the livestock market. A person other than a packer shall not knowingly purchase the dairy cattle at the livestock market.

2. This section shall not supersede requirements relating to the movement or marketing of livestock infected with an infectious or contagious disease, including but not limited to those diseases enumerated in section 163.2.

2001 Acts, ch 101, §7
NEW section

172E.3 Penalties.

1. The department, with assistance by the attorney general, shall have the same authority to enforce this chapter as it does under chapter 165A. A person who violates section 172E.2 is subject to the same penalties as provided in section 165A.5.

2. This section does not prevent a person from commencing a civil cause of action based on any right that the person may assert under statute or common law.

2001 Acts, ch 101, §8
NEW section

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 exposition on the Iowa state fairgrounds and to conduct other interim events consistent with its rules. The powers of the authority are vested in the Iowa state fair board. The Iowa state fair board consists of the following:

1. The governor of the state, the secretary of agriculture, and the president of the Iowa state university of science and technology or their quali-

fied representatives.

2. Two district directors from each state fair board district to be elected at a convention as provided in section 173.4.

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.

2001 Acts, ch 29, §1
Subsection 2 amended

173.1A Definitions.

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

1. “*Board*” means the Iowa state fair board as provided in section 173.1.

2. “*Convention*” means the convention held each year, to elect members of the state fair board and conduct other business of the board, as provided in section 173.2.

3. “*District director*” means a director of the Iowa state fair board who represents a state fair board district.

4. “*State fair board district*” or “*district*” means any of the six geographic regions established in section 173.4A.

2001 Acts, ch 29, §2
NEW section

173.2 Convention.

A convention shall be held at a time and place in Iowa to be designated by the Iowa state fair board each year, to elect members of the state fair board and conduct other business of the board. The board shall give sixty days’ notice of the location of the convention to all agricultural associations and persons eligible to attend. The convention shall be composed of:

1. The members of the state fair board as then organized.

2. The president or secretary of each county or district agricultural society entitled to receive aid from the state, or a regularly elected delegate therefrom accredited in writing, who shall be a resident of the county.

3. One delegate, a resident of the county, to be appointed by the board of supervisors in each county where there is no such society, or when such society fails to report to the association of Iowa fairs in the manner provided by law as a basis for state aid. The association shall promptly report such failure to the county auditor.

Duties and powers of state fair board retained; election of district directors at 2001 convention; 2001 Acts, ch 29, §7
Section not amended; footnote added

173.4 Voting power — election of district directors.

1. Except as provided in this subsection, each member present at the convention shall be entitled to not more than one vote. A member shall

not vote by proxy.

2. A successor to a district director shall be elected by a majority of convention members from the same state fair board district as the district director, according to rules adopted by the convention. A member who is also a district director shall not be entitled to vote for a successor to a district director.

2001 Acts, ch 29, §3
Subsection 2 amended

173.4A State fair board districts.

The state shall be divided into six geographic regions known as state fair board districts. The regions shall include all of the following:

1. The northwest state fair board district which shall contain all of the following counties: Buena Vista, Calhoun, Cherokee, Clay, Dickinson, Emmet, Ida, Lyon, O’Brien, Osceola, Palo Alto, Plymouth, Pocahontas, Sac, Sioux, and Woodbury.

2. The north central state fair board district which shall contain all of the following counties: Boone, Butler, Cerro Gordo, Floyd, Franklin, Grundy, Hamilton, Hancock, Hardin, Humboldt, Kossuth, Marshall, Mitchell, Story, Tama, Webster, Winnebago, Worth, and Wright.

3. The northeast state fair board district which shall contain all of the following counties: Allamakee, Benton, Black Hawk, Bremer, Buchanan, Chickasaw, Clayton, Delaware, Dubuque, Fayette, Howard, Jackson, Jones, Linn, and Winneshek.

4. The southwest state fair board district which shall contain the following counties: Adair, Adams, Audubon, Carroll, Cass, Crawford, Fremont, Greene, Guthrie, Harrison, Mills, Monona, Montgomery, Page, Pottawattamie, Shelby, and Taylor.

5. The south central state fair board district which shall contain the following counties: Appanoose, Clarke, Dallas, Decatur, Jasper, Lucas, Madison, Mahaska, Marion, Monroe, Polk, Poweshiek, Ringgold, Union, Warren, and Wayne.

6. The southeast state fair board district which shall contain the following counties: Cedar, Clinton, Davis, Des Moines, Henry, Iowa, Jefferson, Johnson, Keokuk, Lee, Louisa, Muscatine, Scott, Van Buren, Wapello, and Washington.

2001 Acts, ch 29, §4
Election of initial district directors; 2001 Acts, ch 29, §7
NEW section

173.5 Duties of the convention.

1. The convention shall establish staggered terms of office for the elected directors. Notwithstanding section 173.6, the convention may establish terms of office for initial elected directors for more or less than two years.

2. Each year, the convention shall elect a successor to one of the two district directors whose term expires following the adjournment of the convention, as provided in section 173.4.

3. The Iowa state fair board shall present a financial report to the convention. The report is not required to include an audit, but shall provide an estimate of the accounts under the authority of the board.

2001 Acts, ch 29, §5
2001 convention duties; 2001 Acts, ch 29, §7
Subsection 2 amended

173.6 Terms of office.

The term of the president and vice president of the board shall be one year. A person shall not hold the office of president for more than three consecutive years, plus any portion of a year in which the person was first elected by the board to fill a vacancy.

A member of the board who is a district director shall serve a term of two years. The term of a district director shall begin following the adjournment of the convention at which the district director was elected and shall continue until a successor is elected and qualified as provided in this chapter.

2001 Acts, ch 29, §6
Election and terms of office of district directors elected at 2001 conven-

tion; 2001 Acts, ch 29, §7
Unnumbered paragraph 2 amended

173.16 Maintenance of state fair.

All expenses incurred in maintaining the state fairgrounds and in conducting the annual fair on it, including the compensation and expenses of the officers, members, and employees of the board, shall be recorded by the secretary and paid from the state fair receipts, unless a specific appropriation has been provided for that purpose. The board may request special capital improvement appropriations from the state and may request emergency funding from the executive council for natural disasters. The board may request that the department of transportation provide maintenance in accordance with section 307A.2, subsection 11.

In order to efficiently administer facilities and events on the state fairgrounds, and to promote Iowa's conservation ethic, the Iowa state fair board shall handle or dispose of waste generated on the state fairgrounds under supervision of the land quality and waste management assistance division established under section 455B.483.

2001 Acts, ch 7, §2
Unnumbered paragraph 2 amended

CHAPTER 175A

GRAPE AND WINE DEVELOPMENT

175A.1 Definitions.

1. "Commission" means the grape and wine development commission as established pursuant to section 175A.2.

2. "Department" means the department of agriculture and land stewardship.

3. "Fund" means the grape and wine development fund created pursuant to section 175A.5.

4. "Grower" means a person who owns a vineyard and is actively engaged in growing grapes on a commercial basis in this state for use by a winery.

5. "Retail seller" means a person actively engaged in the business of selling wine in this state on a retail basis.

6. "Vineyard" means a tract of land used for growing grapes used in making wine.

7. "Wine" means the same as defined in section 123.3.

8. "Winemaker" means a person who owns a winery and is actively engaged in producing wine in this state on a commercial basis.

9. "Winery" means a commercial operation using grapes for the production of wine on a commercial basis.

2001 Acts, ch 162, §2
NEW section

175A.2 Grape and wine development commission.

1. A grape and wine development commission

is established within the department. The commission shall be composed of the following persons:

a. The following persons, or their designees, who shall serve as nonvoting, ex officio members:

(1) The secretary of agriculture.

(2) The dean of the college of agriculture of Iowa state university of science and technology.

(3) The director of the department of economic development.

(4) The director of the department of natural resources.

b. The following persons appointed by the secretary of agriculture, who shall serve as voting members:

(1) Two growers.

(2) Two winemakers.

(3) One retail seller.

The secretary of agriculture shall appoint the voting members based on a list of nominations submitted by organizations representing growers, winemakers, and retail sellers as certified by the department according to requirements of the department. Appointments of voting members are subject to the requirements of sections 69.16 and 69.16A. In addition, the appointments shall be geographically balanced. Unless the secretary of agriculture determines that it is not feasible, at least one person appointed as a voting member shall reside in each of the state's congressional dis-

tricts at the time of appointment. The secretary of agriculture's appointees shall be confirmed by the senate, pursuant to section 2.32.

2. The voting members shall serve three-year terms beginning and ending as provided in section 69.19. However, the secretary of agriculture shall appoint initial members to serve for less than three years to ensure members serve staggered terms. A member is eligible for reappointment. A vacancy on the commission shall be filled for the unexpired portion of the regular term in the same manner as regular appointments are made.

3. The commission shall elect a chairperson from among its voting members each year on a rotating basis as provided by the commission. The commission shall meet on a regular basis and at the call of the chairperson or upon the written request to the chairperson of two or more voting members.

4. Members are not entitled to receive compensation or reimbursement of expenses from the department as otherwise provided in section 7E.6.

5. Three voting members constitute a quorum and the affirmative vote of a majority of the voting members present is necessary for any substantive action to be taken by the commission. The majority shall not include any member who has a conflict of interest and a statement by a member that the member has a conflict of interest is conclusive for this purpose. A vacancy in the membership does not impair the duties of the commission.

2001 Acts, ch 162, §3
NEW section

175A.3 Administration.

1. The department shall administer this chapter and shall do all of the following:

a. Establish and administer grape and wine development programs as provided in section 175A.4 and account for and expend moneys from the grape and wine development fund created pursuant to section 175A.5.

b. Report to the commission regarding the status of grape and wine development, including information regarding persons receiving assistance under grape and wine development programs as provided in section 175A.4 and the status of the grape and wine development fund as provided in section 175A.5.

c. Provide facilities for the commission to meet and carry out its powers and duties as provided in this section, including by staffing commission meetings.

d. Adopt all rules necessary to administer this chapter.

2. The grape and wine development commission shall oversee the administration of this chapter by the department and shall do all of the following:

a. Monitor conditions, practices, policies, and programs affecting the grape and wine develop-

ment in this state.

b. Establish mutually beneficial relationships with local, state, and federal governmental agencies and local, regional, and national associations representing growers and winemakers.

c. Contract with a viticulturist or oenologist to provide technical assistance under grape and wine development programs as provided in section 175A.4.

d. Approve or disapprove applications for financial assistance under grape and wine development programs as provided in section 175A.4, after departmental review and recommendation and in accordance with rules adopted pursuant to this chapter. The department shall adopt rules for awarding moneys to persons submitting proposals, including procedures for submitting applications and criteria for selecting proposals.

e. Approve rules proposed by the department for adoption pursuant to chapter 17A required for the administration of this chapter.

2001 Acts, ch 162, §4
NEW section

175A.4 Grape and wine development programs.

The department in cooperation with the commission shall establish grape and wine development programs by assisting persons in establishing, improving, or expanding vineyards or winemaking operations, including wineries. To every extent feasible, the programs shall provide assistance to persons located in all regions of the state. The programs may provide for all of the following:

1. Technical assistance which may include all the following:

a. Viticultural assistance in order to increase the size of vineyards, improve yield, and enhance the character, composition, and condition of grapes. The department may provide technical assistance regarding the selection and management of vines suitable for regions of this state; cultivation and harvest practices; the implementation of practices designed to improve grape growing based on soil types, nutrients and minerals, space, climate, and drainage; the use of recommended varieties of native or hybrid cultivars; and disease, weed, and pest control, including the safe and effective application of pesticides or herbicides or the use of organic practices.

b. Oenological assistance which may be based on oenological study in order to produce, preserve, and transport commercially viable wines, including high-quality wines, wines adapted to particular regions of the state, and wines with distinctive tastes produced from native or hybrid cultivars. The technical assistance may include assistance regarding improving practices or constructing facilities designed to expand or improve processing, cellarage, or bottling.

2. Financial assistance which shall be in the

form of a loan, forgivable loan, loan guarantee, cost share, indemnification of costs, or any combination of such financing as deemed appropriate by the commission. The financial assistance may be awarded to persons beginning or engaged in grape growing or winemaking, based on a sound business plan that demonstrates the viability of the proposed operations.

2001 Acts, ch 162, §5
NEW section

175A.5 Grape and wine development fund.

1. A grape and wine development fund is created in the state treasury under the control of the department. The fund is composed of moneys appropriated by the general assembly and moneys available to and obtained or accepted by the de-

partment from the United States or private sources for placement in the fund. The fund shall include moneys deposited into the fund from the wine gallonage tax as provided in section 123.183.

2. Moneys in the fund are appropriated to the department exclusively to carry out grape and wine development programs as provided in section 175A.4, including contracting with a viticulturist or oenologist to provide technical assistance and to provide financial assistance to growers and winemakers as provided in that section.

3. Section 8.33 shall not apply to moneys in the fund. Notwithstanding section 12C.7, moneys earned as income or interest from the fund shall remain in the fund until expended as provided in this section.

2001 Acts, ch 162, §6
NEW section

CHAPTER 176A

COUNTY AGRICULTURAL EXTENSION

176A.8 Powers and duties of county agricultural extension council.

The extension councils of each extension district of the state shall have, exercise, and perform the following powers and duties:

1. To elect from their own number annually a chairperson, vice chairperson, secretary and a treasurer who shall serve and be the officers of the extension council for a term of one year, and perform the functions and duties as herein in this chapter provided.

2. To serve as an agency of the state and to manage and transact all of the business and affairs of its district and have control of all of the property acquired by it and necessary for the conduct of the business of the district for the purposes of this chapter.

3. To and shall, at least ninety days prior to the date fixed for the election of council members, appoint a nominating committee consisting of four persons who are not council members and designate the chairperson. The membership of the nominating committee shall be gender balanced. The nominating committee shall consider the geographic distribution of potential nominees in nominating one or more resident registered voters of the extension district as candidates for election to each office to be filled at the election. To qualify for the election ballot, each nominee shall file a nominating petition signed by at least twenty-five eligible electors of the district with the county commissioner of elections at least sixty-nine days before the date of election.

The council shall also provide for the nomination by petition of candidates for election to membership on the extension council. A nominating petition shall be signed by at least twenty-five eli-

gible electors of the extension district and shall be filed with the county commissioner of elections at least sixty-nine days before the date of the election.

4. To enter into a Memorandum of Understanding with the extension service setting forth the cooperative relationship between the extension service and the extension district.

5. To employ all necessary extension professional personnel from qualified nominees furnished to it and recommended by the director of extension and not to terminate the employment of any such without first conferring with the director of extension, and to employ such other personnel as it shall determine necessary for the conduct of the business of the extension district, and to fix the compensation for all such personnel in cooperation with the extension service and in accordance with the Memorandum of Understanding entered into with such extension service.

6. To prepare annually before March 15 a budget for the fiscal year beginning July 1 and ending the following June 30, in accordance with the provisions of chapter 24 and certify the same to the board of supervisors of the county of their extension district as required by law.

7. To and shall be responsible for the preparation and adoption of the educational program on extension work in agriculture, home economics and 4-H club work, and periodically review said program and for the carrying out of the same in cooperation with the extension service in accordance with the Memorandum of Understanding with said extension service.

8. To make and adopt such rules not inconsistent with the law as it may deem necessary for its own government and the transaction of the busi-

ness of the extension district.

9. To fill all vacancies in its membership to serve for the unexpired term of the member creating the vacancy by appointing a resident registered voter of the extension district. However, if an unexpired term in which the vacancy occurs has more than seventy days to run after the date of the next pending election and the vacancy occurs seventy-four or more days before the election, the vacancy shall be filled at the next pending election.

10. To and shall, as soon as possible following the meeting at which the officers are elected, file in the office of the board of supervisors and of the county treasurer a certificate signed by its chairperson and secretary certifying the names, addresses and terms of office of each member, and the names and addresses of the officers of the extension council with the signatures of the officers affixed thereto, and said certificate shall be conclusive as to the organization of the extension district, its extension council, and as to its members and its officers.

11. To and shall deposit all funds received from the "county agricultural extension education fund" in a bank or banks approved by it in the name of the extension district. These receipts shall constitute a fund known as the "county agricultural extension education fund" which shall be disbursed by the treasurer of the extension council on vouchers signed by its chairperson and secretary and approved by the extension council and recorded in its minutes.

12. To expend the "county agricultural extension education fund" for salaries and travel, expense of personnel, rental, office supplies, equip-

ment, communications, office facilities and services, and in payment of such other items as shall be necessary to carry out the extension district program; provided, however, it shall be unlawful for the county agricultural extension council to lease any office space which is occupied or used by any other farm organization or farm cooperative, and provided further, that it shall be lawful for the county agricultural extension council to lease space in a building owned or occupied by a farm organization or farm cooperative.

13. To carry over unexpended county agricultural extension education funds into the next year so that funds will be available to carry on the program until such time as moneys received from taxes are collected by the county treasurer. However, the unencumbered funds in the county agricultural extension education fund in excess of one-half the amount expended from the fund in the previous year shall be paid over to the county treasurer. The treasurer of the extension council with the approval of the council may invest agricultural extension education funds retained by the council and not needed for current expenses in the manner authorized for treasurers of political subdivisions under section 12C.1.

14. To file with the county auditor and to publish in two newspapers of general circulation in the district before August 1 full and detailed reports under oath of all receipts, from whatever source derived, and expenditures of such county agricultural extension education fund showing from whom received, to whom paid and for what purpose for the last fiscal year.

2001 Acts, ch 56, §10

Subsection 3, unnumbered paragraph 2 amended

CHAPTER 192

GRADE "A" MILK INSPECTION

192.1 through 192.100 Reserved

Former repealed, transferred, and reserved entries for sections 192.1 through 192.100 eliminated per directive in 2001 Acts, ch 129, §8; for former repealed, transferred, and reserved entries for these sections, see Code 2001

192.101A Definitions.

As used in this chapter, all terms shall have the same meaning as defined in the "Grade 'A' Pasteurized Milk Ordinance, 1999 Revision". However, notwithstanding the ordinance, the following definitions shall apply:

1. "*Bulk milk tanker*" means a mobile bulk container used to transport milk or fluid milk products from a dairy farm to a milk plant or from a milk plant to another milk plant, including an over-the-road semitrailer or a tanker that is permanently mounted on a motor vehicle.

2. "*Milk grader*" means a person, including dairy industry milk intake personnel, other than

a milk hauler, who collects a milk sample from a bulk tank or a bulk milk tanker.

3. "*Milk hauler*" means a person who takes farm samples or transports raw milk or raw milk products to or from a milk plant, receiving station, or transfer station, including a dairy industry milk field person. However, a milk hauler does not include a person who drives a bulk milk tanker, if the person does not take a milk sample or handle raw milk or raw milk products.

2001 Acts, ch 129, §3

Unnumbered paragraph 1 amended

192.102 Grade "A" pasteurized milk ordinance.

The department shall adopt, by rule, the "Grade 'A' Pasteurized Milk Ordinance, 1999 Revision", including a subsequent revision of the ordinance. If the ordinance specifies that compliance with a

provision of the ordinance's appendices is mandatory, the department shall also adopt that provision. The department shall not amend the ordinance, unless the department explains each amendment and reasons for the amendment in the Iowa administrative bulletin when the rules are required to be published pursuant to chapter 17A. The department shall administer this chapter consistent with the provisions of the ordinance.

2001 Acts, ch 129, §4
Section amended

192.110 Rating required to receive or retain a permit.

A person shall not receive or retain a permit under section 192.107, unless both of the following conditions are satisfied:

1. The person has a pasteurized milk and milk products sanitation compliance rating of ninety

percent or more as calculated according to the rating system as contained in the federal public health service publications, "Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration Program for Certification of Interstate Milk Shippers 1999" and "Method of Making Sanitation Ratings of Milk Supplies, 1999 Revision". The applicable provisions of these publications are incorporated into this section by this reference. A copy of each publication shall be on file with the department or in the office of the person subject to an inspection contract as provided in section 192.108.

2. The facilities and equipment used to produce, store, or transport milk or milk products comply with requirements of the "Grade 'A' Pasteurized Milk Ordinance" as provided in section 192.102.

2001 Acts, ch 129, §5
Subsection 1 amended

CHAPTER 196

EGG HANDLERS

196.8 Quality — storage.

1. All eggs offered for sale to an establishment must be no lower than United States department of agriculture consumer grade "B". From the time of candling and grading until they reach the consumer, all eggs designated for human consumption shall be held at a temperature not to exceed forty-five degrees Fahrenheit or seven degrees Celsius ambient temperature. The forty-five degrees Fahrenheit or seven degrees Celsius ambient temperature requirement applies to any place or room in which eggs are stored, except inside a vehicle during transportation where the ambient temperature may exceed forty-five degrees Fahrenheit or seven degrees Celsius, provided the transport vehicle is equipped with refrigeration

units capable of delivering air at a temperature not greater than forty-five degrees Fahrenheit or seven degrees Celsius and capable of cooling the vehicle to a temperature not greater than forty-five degrees Fahrenheit or seven degrees Celsius. All shell eggs shall be kept from freezing.

2. Notwithstanding subsection 1, eggs gathered for sale at a poultry show from fowl exhibited at the show, which show has received financial assistance from the state in prior fiscal years, shall be exempt from the storage temperature and consumer grade quality requirements contained in subsection 1.

2001 Acts, ch 176, §15
Subsection 2 amended

CHAPTER 200

FERTILIZERS AND SOIL CONDITIONERS

200.7 Fertilizer-pesticide mixture.

Only those persons licensed under section 200.4 shall be permitted to add pesticides to commercial fertilizers. These persons shall at all times produce a uniform mixture of fertilizer and pesticide

and shall register and label their product in compliance with both chapter 206 and this chapter.

2001 Acts, ch 24, §36
Section amended

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 one thousand bushels of grain or more directly from the producers of the grain for purposes of resale, milling, or processing. However, *“grain dealer”* does not include any of the following:

a. A producer of grain who is buying grain for the producer’s own use as seed or feed.

b. A person solely engaged in buying grain future contracts on the board of trade.

c. A person who purchases grain only for sale in a feed regulated under chapter 198.

d. A person who purchases grain only from grain dealers licensed under this chapter.

e. A person engaged in the business of selling agricultural seeds regulated by chapter 199.

f. A person buying grain only as a farm manager.

g. An executor, administrator, trustee, guardian, or conservator of an estate.

h. A bargaining agent as defined in section 203A.1.

i. A custom livestock feeder.

j. A cooperative organized under chapter 501, if the cooperative only purchases grain from its members who are producers or from a licensed grain dealer, and the cooperative does not resell that grain.

k. A limited liability company as defined in section 490A.102 that meets all of the following requirements:

(1) The majority of voting rights in the limited liability company are held by its members who are producers.

(2) The purpose of the limited liability company is to produce renewable fuel as defined in section 159A.2.

(3) The limited liability company only purchases grain from its members who are producers or from a licensed grain dealer.

(4) The limited liability company does not resell grain that it purchases.

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.

2001 Acts, ch 36, §1, 2

Subsection 8, paragraph j amended and NEW paragraph k

203.12A Lien on grain dealer assets.

1. A statutory lien is imposed on all grain dealer assets in favor of sellers who have surrendered warehouse receipts or other written evidence of

ownership as part of a grain sale transaction or who possess written evidence of the sale of grain to a grain dealer, without receiving full payment for the grain.

2. “*Grain dealer assets*” includes proceeds received or due a grain dealer upon the sale, including exchange, collection, or other disposition, of grain sold by the grain dealer. As used in this section, “*proceeds*” means noncash and cash proceeds as defined in section 554.9102. “*Grain dealer assets*” also includes any other funds or property of the grain dealer which can be directly traced as being from the sale of grain by the grain dealer, or which were utilized in the business operation of the grain dealer. A court, upon petition by an affected party, may order that claimed grain dealer assets are not grain dealer assets as defined in this section. The burden of proof shall be upon the petitioner to establish that the assets are not grain dealer assets as defined in this section.

3. The lien shall arise at the time of surrender of warehouse receipts or other written evidence of ownership as part of a grain sale transaction or the time of delivery of the grain for sale, and shall terminate when the liability of the grain dealer to the seller has been discharged. The lien of all sellers is hereby assigned to the Iowa grain indemnity fund board, on behalf of the grain depositors and sellers indemnity fund.

4. To perfect the lien, the Iowa grain indemnity fund board must file a lien statement with the office of the secretary of state. The lien statement is valid only if filed on or after the date of suspension but not later than sixty days after the incurrence date as provided in section 203D.6. The lien statement shall disclose the name of the grain dealer, the address of the dealer’s principal place of business, a description of identifiable grain dealer assets, and the amount of the lien. The lien amount shall be the board’s estimate of the final cost of reimbursing the grain depositors and sellers indemnity fund for the payment of claims against the fund resulting from the breach of the grain dealer’s obligations. The board shall correct the amount not later than one hundred eighty days following the incurrence date. A court, upon petition by an affected person, may correct the amount. The board shall have the burden of proving that the amount is an accurate estimate.

5. The Iowa grain indemnity fund board shall upon written demand of the grain dealer file a termination statement with the secretary of state, if the license of the grain dealer is not revoked, terminated, or canceled after one hundred eighty days from the date that the lien is perfected. Upon filing the termination statement, the lien becomes unperfected. The board shall also deliver a copy of the termination statement to the grain dealer.

6. The secretary of state shall note the filing of a lien statement under this section in a manner provided by chapter 554, the uniform commercial

code. The secretary shall note the filing of a termination statement with the lien statement.

7. A lien statement filed under this section shall be a security interest perfected under chapter 554 and subject to the same priority as provided under section 554.9322.

8. If the grain dealer is also licensed under chapter 203C, and in the event the department is appointed as a receiver under section 203C.3, assets under the authority of the receiver are free from this statutory lien. However, if there are receivership assets in excess of those necessary to fully reimburse depositors, the perfected lien will attach to those excess assets.

9. The board may enforce the lien in the manner provided in chapter 554, article 9, part 6, for the enforcement of security interests. If, upon enforcement of the lien, the lien amount is satisfied in full without exhaustion of the grain dealer assets, the remaining assets shall be returned to the grain dealer or, if there are competing claims to those remaining assets by other creditors, shall place those assets in the custody of the district court and implead the known creditors.

For purposes of enforcement of the lien, the board is deemed to be the secured party and the grain dealer is deemed to be the debtor, and each has the respective rights and duties of a secured party and a debtor as provided in chapter 554, article 9, part 6. If a right or duty under chapter 554, article 9, part 6, is contingent upon the existence of express language in a security agreement, or may be waived by express language in a security agreement, the requisite language is deemed not to exist for purposes of enforcement of the lien created by this section.

10. Actions relating to this section shall be brought in the district court in the county in which the grain dealer’s primary place of business is located or in Polk county.

2000 Acts, ch 1149, §163, 187
2000 amendments to subsections 2, 7, and 9 are effective July 1, 2001;
2000 Acts, ch 1149, §187
Subsections 2, 7, and 9 amended

203.16 Confidentiality of records.

Notwithstanding chapter 22, all financial statements of grain dealers under this chapter shall be kept confidential by the department and its agents and employees and are not subject to disclosure except as follows:

1. Upon waiver by the licensee.
2. In actions or administrative proceedings commenced under this chapter or chapter 203C.
3. Disclosure to the Iowa grain indemnity fund board in regard to licensees who present liability to the fund.
4. When required by subpoena or court order.
5. Disclosure to law enforcement agencies in regard to the detection and prosecution of public offenses.
6. When released to a bonding company ap-

proved by the department, or released to the United States department of agriculture or any of its divisions.

7. Where released at the request of the Iowa board of accountancy for licensee review and discipline in accordance with chapters 272C and 542C and subject to the confidentiality requirements of

section 272C.6.

8. Disclosure to the grain industry peer review panel as provided in section 203.11B.

For future amendment to subsection 7 effective July 1, 2002, see 2001 Acts, ch 55, §23, 38

Section not amended; footnote added

CHAPTER 203C

WAREHOUSES FOR AGRICULTURAL PRODUCTS

203C.12A Lien on warehouse operator assets.

1. A statutory lien is imposed on all warehouse operator assets in favor of depositors possessing warehouse receipts covering grain stored by the warehouse operator and depositors with written evidence of ownership other than warehouse receipts disclosing a storage obligation of a warehouse operator.

2. “Warehouse operator assets” includes proceeds received or due a warehouse operator upon the sale, including exchange, collection, or other disposition, of grain sold by the warehouse operator. As used in this section, “proceeds” means non-cash and cash proceeds as defined in section 554.9102. “Warehouse operator assets” also includes storage payments received or due to a warehouse operator, grain owned by the warehouse operator, and any other funds or property of the warehouse operator which can be directly traced as being from the sale of grain by the warehouse operator, or which were utilized in the business operation of the warehouse operator. A court, upon petition by an affected party, may order that claimed warehouse operator assets are not warehouse operator assets as defined in this section. The burden of proof shall be upon the petitioner to establish that the assets are not warehouse operator assets as defined in this section.

3. The lien shall arise at the commencement of the storage obligation, and shall terminate when the liability of the warehouse operator to the depositor has been discharged. The lien of all depositors is hereby assigned to the Iowa grain indemnity fund board, on behalf of the grain depositors and sellers indemnity fund.

4. To perfect the lien, the Iowa grain indemnity fund board must file a lien statement with the office of the secretary of state. The lien statement is valid only if filed on or after the date of suspension but not later than sixty days after the incurrence date as provided in section 203D.6. The lien statement shall disclose the name of the warehouse operator, the address of the warehouse operator’s principal place of business, a description of identifiable warehouse operator assets, and the amount of the lien. The lien amount shall be the

board’s estimate of the final cost of reimbursing the grain depositors and sellers indemnity fund for the payment of claims made against the fund resulting from the breach of the warehouse operator’s obligations. The board shall correct the amount not later than one hundred eighty days following the incurrence date. A court, upon petition by an affected person, may correct the amount. The board shall have the burden of proving that the amount is an accurate estimate.

5. The Iowa grain indemnity fund board shall upon written demand of the warehouse operator file a termination statement with the secretary of state, if the license of the warehouse operator is not revoked, terminated, or canceled after one hundred eighty days from the date that the lien is perfected. Upon filing the termination statement, the lien becomes unperfected. The board shall also deliver a copy of the termination statement to the warehouse operator.

6. The secretary of state shall note the filing of a lien statement under this section in a manner provided by chapter 554, the uniform commercial code. The secretary shall note the filing of a termination statement with the lien statement.

7. A lien statement filed under this section shall be a security interest perfected under chapter 554 and subject to the same priority as provided under section 554.9322.

8. In the event the department is appointed as a receiver under section 203C.3, assets under the authority of the receiver are free from this statutory lien. However, if there are receivership assets in excess of those necessary to fully reimburse depositors, the perfected lien will attach to those excess assets.

9. The Iowa grain indemnity fund board may enforce the lien in the manner provided in chapter 554, article 9, part 6, for the enforcement of security interests. If, upon enforcement of the lien, the lien amount is satisfied in full without exhaustion of the warehouse operator assets, the remaining assets shall be returned to the warehouse operator or, if there are competing claims to those remaining assets by other creditors, those assets shall be placed in the custody of the district court and the known creditors impleaded.

For purposes of enforcement of the lien, the board is deemed to be the secured party and the warehouse operator is deemed to be the debtor, and each has the respective rights and duties of a secured party and a debtor as provided in chapter 554, article 9, part 6. If a right or duty under chapter 554, article 9, part 6, is contingent upon the existence of express language in a security agreement, or may be waived by express language in a security agreement, the requisite language is deemed not to exist for purposes of enforcement of the lien created by this section.

10. Actions relating to this section shall be brought in the district court in the county in which the warehouse operator's primary place of business is located or in Polk county.

2000 Acts, ch 1149, §164, 187
2000 amendments to subsections 2, 7, and 9 are effective July 1, 2001;
2000 Acts, ch 1149, §187
Subsections 2, 7, and 9 amended

203C.24 Confidentiality of records.

Notwithstanding the provisions of chapter 22, all financial statements of warehouse operators under this chapter shall be kept confidential by the department and its agents and employees and

are not subject to disclosure except as follows:

1. Upon waiver by the licensee.
2. In actions or administrative proceedings commenced under this chapter or chapter 203.
3. Disclosure to the Iowa grain indemnity fund board in regard to licensees who present liability to the fund.
4. When required by subpoena or other court orders.
5. Disclosure to law enforcement agencies in regards to the detection and prosecution of public offenses.
6. Where released to a bonding company approved by the department or to the United States department of agriculture or any of their divisions.
7. Where released at the request of the Iowa board of accountancy for licensee review and discipline in accordance with chapters 272C and 542C and subject to the confidentiality requirements of section 272C.6.
8. Disclosure to the grain industry peer review panel as provided in section 203.11B.

For future amendment to subsection 7 effective July 1, 2002, see 2001 Acts, ch 55, §24, 38
Section not amended; footnote added

CHAPTER 205

SALE AND DISTRIBUTION OF POISONS

205.5 Regulations as to sales of certain poisons.

It shall be unlawful for any person except a licensed pharmacist to sell at retail any of the poisons enumerated in this section: Ammoniated mercury, mercury bichloride, red mercuric iodide, and other poisonous salts and compounds of mercury; salts and compounds of arsenic; salts of antimony; salts of barium except the sulphate; salts of thallium; hydrocyanic acid and its salts; chromic, glacial acetic, and picric acids; chloral hydrate,

croton oil, creosol, chloroform, dinitrophenol, ether, oil of bitter almonds, phenol, phosphorus and sodium fluoride; aconitine, arecoline, atropine, brucine, homatropine, hyoscyamine, nicotine, strychnine, and the salts of these alkaloids; aconite, belladonna, cantharides, digitalis, nuxvomica, veratrum, and the preparations of these poisonous drugs.

2001 Acts, ch 24, §37
Section amended

CHAPTER 206

PESTICIDES

206.23 Advisory committee created — duties.

1. An advisory committee to the secretary is created. The advisory committee shall have the following members:

- a. The dean, college of veterinary medicine, Iowa state university of science and technology, or the dean's designee;
- b. The dean, university of Iowa college of medicine, or the dean's designee;
- c. An entomologist, botanist, geneticist, horti-

culturist, agronomist and two persons representing the general public appointed by the secretary. Appointive members of the advisory committee shall serve terms of four years.

2. The advisory committee shall assist the secretary in obtaining scientific data and co-ordinating agricultural chemical regulatory, enforcement, research, and educational functions of the state. The advisory committee shall recommend rules regarding the sale, use, or disuse of agricultural chemicals to the secretary.

3. The advisory committee shall adopt rules relating to its procedures, and meetings under the general supervision of the secretary.

4. The members of the advisory committee shall be reimbursed for actual and necessary ex-

penses incurred by them in the discharge of their official duties.

2001 Acts, ch 74, §8
Subsection 1, paragraph b amended

CHAPTER 216

CIVIL RIGHTS COMMISSION

216.15A Additional proceedings — housing discrimination.

1. *a.* The commission may join a person not named in the complaint as an additional or substitute respondent if in the course of the investigation, the commission determines that the person should be alleged to have committed a discriminatory housing or real estate practice.

b. In addition to the information required in the notice, the commission shall include in a notice to a respondent joined under this subsection an explanation of the basis for the determination under this subsection that the person is properly joined as a respondent.

2. *a.* The commission shall, during the period beginning with the filing of a complaint and ending with the filing of a charge or a dismissal by the commission, to the extent feasible, engage in mediation with respect to the complaint.

b. A mediation agreement is an agreement between a respondent and the complainant and is subject to commission approval.

c. A mediation agreement may provide for binding arbitration or other method of dispute resolution. Dispute resolution that results from a mediation agreement may authorize appropriate relief, including monetary relief.

d. A mediation agreement shall be made public unless the complainant and respondent agree otherwise, and the commission determines that disclosure is not necessary to further the purposes of this chapter relating to unfair or discriminatory practices in housing or real estate.

e. The proceedings or results of mediation shall not be made public or used as evidence in a subsequent proceeding under this chapter without the written consent of the persons who are party to the mediation.

f. After the completion of the commission's investigation, the commission shall make available to the aggrieved person and the respondent information derived from the investigation and the final investigation report relating to that investigation.

g. When the commission has reasonable cause to believe that a respondent has breached a mediation agreement, the commission shall refer this matter to an assistant attorney general with a recommendation that a civil action be filed for the enforcement of the agreement. The assistant attor-

ney general may commence a civil action in the appropriate district court not later than the expiration of ninety days after referral of the breach.

3. *a.* If the commission concludes, following the filing of a complaint, that prompt judicial action is necessary to carry out the purposes of this chapter relating to unfair or discriminatory housing or real estate practices, the commission may authorize a civil action for appropriate temporary or preliminary relief pending final disposition of the complaint.

b. On receipt of the commission's authorization, the attorney general shall promptly file the action.

c. A temporary restraining order or other order granting preliminary or temporary relief under this section is governed by the applicable Iowa rules of civil procedure.

d. The filing of a civil action under this section does not affect the initiation or continuation of administrative proceedings in regard to an administrative hearing.

4. *a.* The commission shall prepare a final investigative report.

b. A final report under this section may be amended by the commission if additional evidence is discovered.

5. *a.* The commission shall determine based on the facts whether probable cause exists to believe that a discriminatory housing or real estate practice has occurred or is about to occur.

b. The commission shall make its determination under paragraph "a" not later than one hundred days after a complaint is filed unless any of the following applies:

(1) It is impracticable to make the determination within that time period.

(2) The commission has approved a mediation agreement relating to the complaint.

c. If it is impracticable to make the determination within the time period provided by paragraph "b", the commission shall notify the complainant and respondent in writing of the reasons for the delay.

d. If the commission determines that probable cause exists to believe that a discriminatory housing or real estate practice has occurred or is about to occur, the commission shall immediately issue a determination unless the commission determines that the legality of a zoning or land use law

or ordinance is involved as provided in subsection 7.

6. *a.* A determination issued under subsection 5 must include all of the following:

(1) Must consist of a short and plain statement of the facts on which the commission has found probable cause to believe that a discriminatory housing or real estate practice has occurred or is about to occur.

(2) Must be based on the final investigative report.

(3) Need not be limited to the facts or grounds alleged in the complaint.

b. Not later than twenty days after the commission issues a determination, the commission shall send a copy of the determination with information concerning the election under section 216.16A to all of the following persons:

(1) Each respondent, together with a notice of the opportunity for a hearing as provided under subsection 10.

(2) Each aggrieved person on whose behalf the complaint was filed.

7. If the commission determines that the matter involves the legality of a state or local zoning or other land use ordinance, the commission shall not issue a determination and shall immediately refer the matter to the attorney general for appropriate action.

8. *a.* If the commission determines that no probable cause exists to believe that a discriminatory housing or real estate practice has occurred or is about to occur, the commission shall promptly dismiss the complaint.

b. The commission shall make public disclosure of each dismissal under this section.

9. The commission shall not issue a determination under this section regarding an alleged discriminatory housing or real estate practice after the beginning of the trial of a civil action commenced by the aggrieved party under federal or state law seeking relief with respect to that discriminatory housing or real estate practice.

10. *a.* If a timely election is not made under section 216.16A, the commission shall provide for a hearing on the charges in the complaint.

b. Except as provided by paragraph “c”, the hearing shall be conducted in accordance with chapter 17A for contested cases.

c. A hearing under this section shall not be continued regarding an alleged discriminatory housing or real estate practice after the beginning of the trial of a civil action commenced by the aggrieved person under federal or state law seeking relief with respect to that discriminatory housing or real estate practice.

11. *a.* If the commission determines at a hearing under subsection 10 that a respondent has engaged or is about to engage in a discriminatory housing or real estate practice, the commission may order the appropriate relief, including actual damages, reasonable attorney’s fees, court costs,

and other injunctive or equitable relief.

b. To vindicate the public interest, the commission may assess a civil penalty against the respondent in an amount that does not exceed the following applicable amount:

(1) Ten thousand dollars if the respondent has not been adjudged by the order of the commission or a court to have committed a prior discriminatory housing or real estate practice.

(2) Except as provided by paragraph “c”, twenty-five thousand dollars if the respondent has been adjudged by order of the commission or a court to have committed one other discriminatory housing or real estate practice during the five-year period ending on the date of the filing of the complaint.

(3) Except as provided by paragraph “c”, fifty thousand dollars if the respondent has been adjudged by order of the commission or a court to have committed two or more discriminatory housing or real estate practices during the seven-year period ending on the date of the filing of the complaint.

c. If the acts constituting the discriminatory housing or real estate practice that is the object of the complaint are committed by the same natural person who has been previously adjudged to have committed acts constituting a discriminatory housing or real estate practice, the civil penalties in paragraph “b”, subparagraphs (2) and (3) may be imposed without regard to the period of time within which any other discriminatory housing or real estate practice occurred.

d. At the request of the commission, the attorney general shall initiate legal proceedings to recover a civil penalty due under this section. Funds collected under this section shall be paid to the treasurer of state for deposit in the state treasury to the credit of the general fund.

12. This section applies only to the following:

a. Complaints which allege a violation of the prohibitions contained in section 216.8 or 216.8A.

b. Complaints which allege a violation of section 216.11 or 216.11A arising out of alleged violations of the prohibitions contained in section 216.8 or 216.8A.

13. If a provision of this section applies under the terms of subsection 12, and the provision of this section conflicts with a provision of section 216.15, then the provision contained within this section shall prevail. Similarly, if a provision of section 216.16A or 216.17A conflicts with a provision of section 216.16 or 216.17, then the provision contained in section 216.16A or 216.17A shall prevail.

2001 Acts, ch 24, §38
Subsection 13 amended

216.15B Formal mediation — confidentiality.

1. A mediator may be designated in writing by the commission to conduct formal mediation of a

complaint filed under this chapter. The written designation must specifically refer to this section.

2. If formal mediation is conducted by a mediator pursuant to this section, the confidentiality of

all mediation communications and mediation documents is protected as provided in section 679C.2.

2001 Acts, ch 71, §1
Section amended

CHAPTER 217

DEPARTMENT OF HUMAN SERVICES

Printed in Addendum

CHAPTER 222

PERSONS WITH MENTAL RETARDATION

Obligation to pay for costs of service rendered prior to July 1, 1997;
disputed billings; see 2001 Acts, ch 155, §12, 13

222.2 Definitions.

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

1. “*Administrator*” means the person assigned by the director of human services, in accordance with section 218.1, to control the state resource centers.

2. “*Auditor*” means the county auditor or the auditor’s designee.

3. “*Department*” means the department of human services.

4. “*Mental retardation*” or “*mentally retarded*” means a term or terms to describe children and adults who as a result of inadequately developed intelligence are significantly impaired in ability to learn or to adapt to the demands of society.

5. “*Single entry point process*” means the same as defined in section 331.440.

6. “*Special unit*” means a special mental retardation unit established at a state mental health institute pursuant to sections 222.88 to 222.91.

7. “*State resource centers*” or “*resource centers*” means the Glenwood state resource center and the Woodward state resource center.

8. “*Superintendents*” means the superintendents of the state resource centers.

2001 Acts, ch 155, §14

NEW subsection 3 and former subsections 3 – 7 renumbered as 4 – 8

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 resource center, 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 disorder.

ders, fourth edition, published by the American psychiatric association.

Obligation to pay for costs of service rendered prior to July 1, 1997; disputed billings; see 2001 Acts, ch 155, §12, 13
Section not amended; footnote added

222.73 Billing of patient charges — computation of actual costs — cost settlement.

1. The superintendent of each resource center 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 and notify the counties of the billing charges.

a. The superintendent shall compute the average daily patient charge for a resource center or special unit for services provided in the following fiscal year, in accordance with generally accepted accounting procedures, by totaling the expenditures of the resource center 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 department 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 pro-

gram, 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.

f. A county shall not be billed for the cost of a patient unless the patient's admission is authorized through the applicable single entry point process. The state resource center and the county shall work together to locate appropriate alternative placements and services, and to educate patients and the family members of patients regarding such alternatives.

The per diem costs billed to each county shall not exceed the per diem costs billed to the county in the fiscal year beginning July 1, 1996. However, the per diem costs billed to a county may be adjusted in a fiscal year to reflect increased costs to the extent of the percentage increase in the total of county fixed budgets pursuant to the allowed growth factor adjustment authorized by the general assembly for that fiscal year in accordance with section 331.439.

3. The superintendent shall compute in January the actual per-patient-per-day cost for each resource center or special unit for the immediately preceding calendar year, in accordance with generally accepted accounting procedures, by totaling the actual expenditures of the resource center 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 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 department 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 department shall credit the county for the difference starting with the billing for the quarter ending June 30.

5. A superintendent of a resource center or special unit may request that the director of human services enter into a contract with a person for the resource center or special unit to provide consultation or treatment services or for fulfilling other purposes which are consistent with the purposes stated in section 222.1. 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 resource center or special unit to defray the costs of providing the services or fulfilling the other purposes. 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.

2001 Acts, ch 155, §15 – 17

Subsection 1, unnumbered paragraph 1 amended

Subsection 2, unnumbered paragraph 1 amended

Subsection 4 amended

222.74 Duplicate to county.

When certifying to the department amounts to be charged against each county as provided in section 222.73, the superintendent shall send to the county auditor of each county against which the superintendent has so certified any amount, a duplicate of the certification statement. The county auditor upon receipt of the duplicate certification statement shall enter it to the credit of the state in the ledger of state accounts, and shall immediately issue a notice to the county treasurer authorizing the treasurer to transfer the amount from the county fund to the general state revenue. The county treasurer shall file the notice as authority

for making the transfer and shall include the amount transferred in the next remittance of state taxes to the treasurer of state, designating the fund to which the amount belongs.

2001 Acts, ch 155, §18

Section amended

222.75 Delinquent payments — penalty.

If a county fails to pay a billed charge within forty-five days from the date the county auditor received the certification statement from the superintendent pursuant to section 222.74, the department may charge the delinquent county a penalty of not greater than one percent per month on and after forty-five days from the date the county auditor received the certification statement until paid.

2001 Acts, ch 155, §19

Obligation to pay for costs of service rendered prior to July 1, 1997; disputed billings; see 2001 Acts, ch 155, §12, 13

Section amended

222.79 Certification statement presumed correct.

In actions to enforce the liability imposed by section 222.78, the certification statement sent from the superintendent to the county auditor pursuant to section 222.74 stating the sums charged in such cases shall be presumptively correct.

2001 Acts, ch 155, §20

Section amended

CHAPTER 225

PSYCHIATRIC HOSPITAL

225.2 Name — location.

It shall be known as the state psychiatric hospital, and shall be located at Iowa City, and integrated with the university of Iowa college of medicine and university hospital of the state university of Iowa.

2001 Acts, ch 74, §9

Section amended

225.27 Discharge — transfer.

The state psychiatric hospital may, at any time, discharge any patient as recovered, as improved, or as not likely to be benefited by further treatment. If the patient being so discharged was involuntarily hospitalized, the hospital shall notify the committing judge or court of the discharge as required by section 229.14 or section 229.16, whichever is applicable. Upon receiving the notification, the court shall issue an order confirming the patient's discharge from the hospital or from care and custody, as the case may be, and shall terminate the proceedings pursuant to which the order was issued. The court or judge shall, if necessary, appoint a person to accompany the discharged patient from the state psychiatric hospital to such

place as the hospital or the court may designate, or authorize the hospital to appoint such attendant.

2001 Acts, ch 155, §41

Section amended

225.30 Blanks — audit.

The medical faculty of the university of Iowa college of medicine shall prepare blanks containing such questions and requiring such information as may be necessary and proper to be obtained by the physician who examines a person or respondent whose referral to the state psychiatric hospital is contemplated. A judge may request that a physician who examines a respondent as required by section 229.10 complete such blanks in duplicate in the course of the examination. A physician who proposes to file an information under section 225.10 shall obtain and complete such blanks in duplicate and file them with the information. The blanks shall be printed by the state and a supply thereof shall be sent to the clerk of each district court of the state. The director of revenue and finance shall audit, allow, and pay the cost of the blanks as other bills for public printing are allowed and paid.

2001 Acts, ch 74, §10

Section amended

225.33 Death of patient — disposal of body.

In the event that a committed public patient or a voluntary public patient or a committed private patient should die while at the state psychiatric hospital or at the university hospital, the state psychiatric hospital shall have the body prepared for shipment in accordance with the rules pre-

scribed by the state board of health for shipping such bodies; and it shall be the duty of the state board of regents to make arrangements for the embalming and such other preparation as may be necessary to comply with the rules and for the purchase of suitable caskets.

2001 Acts, ch 74, §11
Section amended

CHAPTER 225B

PREVENTION OF DISABILITIES

Chapter repealed effective July 1, 2006;
see §225B.8

225B.3 Prevention of disabilities policy council established — membership — duties.

1. A prevention of disabilities policy council is established to provide oversight in the development and operation of a coordinated prevention of disabilities system. The council shall consist of the following members:

a. Two members of the senate appointed by the senate majority leader and minority leader and two members of the house of representatives appointed by the speaker of the house and the house minority leader.

b. Three providers of disability prevention services, recommended by the governor's developmental disabilities council, appointed by the governor, and confirmed by the senate.

c. Three persons with expertise in priority prevention areas, recommended by the governor's developmental disabilities council, appointed by the governor, and confirmed by the senate.

d. Three persons with disabilities or family members of a person with disabilities, recommended by the governor's developmental disabilities council, appointed by the governor and confirmed by the senate.

2. Members of the council appointed by the governor shall serve three-year staggered terms. Members of the general assembly appointed to the council shall serve two-year terms and shall serve as ex officio, nonvoting members. Vacancies on the council shall be filled in the same manner as original appointments. Members are entitled to reimbursement of actual expenses incurred in performance of their official duties.

3. The council shall do all of the following:

a. Oversee the planning, implementation, and evaluation of a coordinated strategy for the prevention of disabilities among state departments which is based upon the Iowa state plan for the prevention of developmental disabilities of 1988.

b. Promote cooperative and complementary planning among the public, private, and volunteer sectors involved in prevention activities and research regarding disabilities.

c. Develop and implement a system to mea-

sure the outcome and assess the overall impact of the prevention efforts of the state.

d. Encourage research into the causes and prevention of disabling conditions.

e. Promote professional and provider training in state-of-the-art prevention of disabilities measures.

f. Recommend policy and priorities for the prevention of disabilities.

g. Adopt rules to implement this chapter.

h. Seek and apply for federal grants and private foundation funding to support the responsibilities of the council. The council shall also seek in-kind and other private contributions to fulfill the federal matching funds requirements for the purpose of section 225B.7.

i. Submit to the governor and the general assembly by November 1, 1992, and annually on November 1 thereafter, a report that includes all of the following:

(1) A continuum of cost-effective prevention of disability activities.

(2) A listing of existing activities and the state agency responsible for the activities.

(3) Recommendations to coordinate the planning, delivery, and evaluation of existing activities.

(4) Recommendations to address the lack of prevention of disability activities.

(5) Recommendations to measure the outcomes and assess the overall impacts of the state's prevention of disability efforts.

(6) Recommendations to promote cooperative planning among the public, private, and volunteer sectors and to increase public-private partnership involvement in prevention of disability activities.

(7) A review of existing research and personnel training programs.

(8) Priorities for disability prevention activities in the state.

(9) Recommendations for legislative, administrative, or budgetary changes.

4. The council shall meet at least six times during the year. A majority of the members of the council constitutes a quorum, and a majority of the

council is necessary to act on matters within the purview of the council.

2001 Acts, ch 74, §12
Subsection 1, paragraphs b – d amended

225B.7 Implementation.

1. The prevention coordination system and the activities of the council shall be implemented as resources are made available.

2. The council shall, during the fiscal year beginning July 1, 1991, request grants from the governor's developmental disabilities council and from private foundations to defray a minimum of seventy-five percent of the costs of implementation of this chapter. The funds shall be used to

carry out the purposes of this chapter, including but not limited to any of the following purposes:

a. Establishing the structure for implementation of the prevention coordination system.

b. Coordinating the activities of the council, state agencies, and state board of regents' institutions to develop the prevention coordination system and prepare the council's annual report.

2001 Acts, ch 74, §13
Subsection 2, unnumbered paragraph 1 amended

225B.8 Repeal.

This chapter is repealed July 1, 2006.

2001 Acts, ch 191, §36
Section amended

CHAPTER 225C

MENTAL ILLNESS, MENTAL RETARDATION, DEVELOPMENTAL DISABILITIES, OR BRAIN INJURY

225C.6 Duties of commission.

1. To the extent funding is available, the commission shall perform the following duties:

a. Advise the administrator on the administration of the overall state disability services system.

b. Adopt necessary rules pursuant to chapter 17A which relate to disability programs and services, including but not limited to definitions of each disability included within the term "*disability services*" as necessary for purposes of state, county, and regional planning, programs, and services.

c. Adopt standards for community mental health centers, services, and programs as recommended under section 230A.16. The commission shall determine whether to grant, deny, or revoke the accreditation of the centers, services, and programs.

d. Adopt standards for the care of and services to persons with mental illness and mental retardation residing in county care facilities recommended under section 227.4.

e. Unless another governmental body sets standards for a service available to persons with disabilities, adopt state standards for that service. The commission shall provide that a service provider's compliance with standards for a service set by a nationally recognized body shall be deemed to be in compliance with the state standards adopted by the commission for that service. The commission shall adopt state standards for those residential and community-based providers of services to persons with mental illness or developmental disabilities that are not otherwise subject to licensure by the department of human services or department of inspections and appeals, including but not limited to services payable under the adult rehabilitation option of the medical assistance

program and other services payable from funds credited to a county mental health, mental retardation, and developmental disabilities services fund created in section 331.424A. In addition, the commission shall review the licensing standards used by the department of human services or department of inspections and appeals for those facilities providing services to persons with mental illness or developmental disabilities.

f. Assure that proper appeal procedures are available to persons aggrieved by decisions, actions, or circumstances relating to accreditation.

g. Adopt necessary rules for awarding grants from the state and federal government as well as other moneys that become available to the division for grant purposes.

h. Annually submit to the governor and the general assembly:

(1) A report concerning the activities of the commission.

(2) Recommendations formulated by the commission for changes in law.

i. By January 1 of each odd-numbered year, submit to the governor and the general assembly an evaluation of:

(1) The extent to which services to persons with disabilities are actually available to persons in each county in the state and the quality of those services.

(2) The effectiveness of the services being provided by disability service providers in this state and by each of the state mental health institutes established under chapter 226 and by each of the state resource centers established under chapter 222.

j. Advise the administrator, the council on human services, the governor, and the general assembly on budgets and appropriations concerning disability services.

- k.* Coordinate activities with the governor's developmental disabilities council.
- l.* Establish standards for the provision under medical assistance of individual case management services. The commission shall determine whether to grant, deny, or revoke the accreditation of the services.
- m.* Identify model eligibility guidelines for disability services.
- n.* Identify basic disability services for planning purposes.
- o.* Prepare five-year plans based upon the county management plans developed pursuant to

section 331.439.

p. Work with other state agencies on coordinating, collaborating, and communicating concerning activities involving persons with disabilities.

2. Notwithstanding section 217.3, subsection 6, the commission may adopt the rules authorized by subsection 1, pursuant to chapter 17A, without prior review and approval of those rules by the council on human services.

2001 Acts, ch 74, §14; 2001 Acts, ch 155, §28
 Subsection 1, paragraphs e and k amended

CHAPTER 226

STATE MENTAL HEALTH INSTITUTES

226.1 Printed in Addendum.

226.26 Dangerous patients.

The administrator, on the recommendation of the superintendent, and on the application of the relatives or friends of a patient who is not cured and who cannot be safely allowed to go at liberty, may release the patient when fully satisfied that the relatives or friends will provide and maintain all necessary supervision, care, and restraint over the patient. If the patient being released was involuntarily hospitalized, the consent of the district court which ordered the patient's hospitalization placement shall be obtained in advance in

substantially the manner prescribed by section 229.14.

2001 Acts, ch 155, §42
 Section amended

226.33 Notice to court.

When a patient who was hospitalized involuntarily and who has not fully recovered is discharged from the hospital by the administrator under section 226.32, notice of the order shall at once be sent to the court which ordered the patient's hospitalization, in the manner prescribed by section 229.14.

2001 Acts, ch 155, §43
 Section amended

CHAPTER 227

COUNTY AND PRIVATE HOSPITALS SERVING PERSONS WITH MENTAL ILLNESS AND MENTAL RETARDATION

227.11 Transfers from state hospitals.

A county chargeable with the expense of a patient in a state hospital for persons with mental illness shall transfer the patient to a county or private institution for persons with mental illness that is in compliance with the applicable rules when the administrator of the division or the administrator's designee orders the transfer on a finding that the patient is suffering from chronic mental illness or from senility and will receive equal benefit by being so transferred. A county shall transfer to its county care facility any patient in a state hospital for persons with mental illness upon request of the superintendent of the state hospital in which the patient is confined pursuant to the superintendent's authority under section 229.15, subsection 4, and approval by the board of supervisors of the county of the patient's residence. In no case shall a patient be thus trans-

ferred except upon compliance with section 229.14A or without the written consent of a relative, friend, or guardian if such relative, friend, or guardian pays the expense of the care of such patient in a state hospital. Patients transferred to a public or private facility under this section may subsequently be placed on convalescent or limited leave or transferred to a different facility for continued full-time custody, care, and treatment when, in the opinion of the attending physician or the chief medical officer of the hospital from which the patient was so transferred, the best interest of the patient would be served by such leave or transfer. For any patient who is involuntarily committed, any transfer made under this section is subject to the placement hearing requirements of section 229.14A.

2001 Acts, ch 155, §44
 Section 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 the department of human services assigned, in accordance with section 218.1, to control the state mental health institutes, or that administrator’s designee.

2. “*Auditor*” means the county auditor or the auditor’s designee.

3. “*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.

4. “*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 persons with mental illness, 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.

5. “*Clerk*” means the clerk of the district court.

6. “*Hospital*” means either a public hospital or a private hospital.

7. “*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.

8. “*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 4, 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.

9. “*Patient*” means a person who has been hospitalized or ordered hospitalized to receive treatment pursuant to section 229.14.

10. “*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 persons with mental illness.

11. “*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 in-

stitution, or part of such hospital or institution, which is equipped and staffed to provide inpatient care to persons with mental illness, except the Iowa medical and classification center established by chapter 904.

12. “*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 licensed under chapter 154C.

13. “*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.

14. “*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.

15. “*Seriously mentally impaired*” or “*serious mental impairment*” describes the condition of a person 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 person with mental illness if the person with mental illness 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.

16. “*Single entry point process*” means the same as defined in section 331.440.

Section not amended; internal reference change applied

229.6A Hospitalization of minors — jurisdiction — due process.

1. Notwithstanding section 229.11, the juvenile court has exclusive original jurisdiction in proceedings concerning a minor for whom an application for involuntary admission is filed under section 229.6 or for whom an application for volun-

tary admission is made under section 229.2, subsection 1, to which the minor objects. In proceedings under this chapter concerning a minor, notwithstanding section 229.11, the term “court”, “judge”, or “clerk” means the juvenile court, judge, or clerk.

2. The procedural requirements of this chapter are applicable to minors involved in hospitalization proceedings pursuant to subsection 1 and placement proceedings pursuant to section 229.14A.

3. It is the intent of this chapter that when a minor is involuntarily or voluntarily hospitalized or hospitalized with juvenile court approval over the minor’s objection the minor’s family shall be included in counseling sessions offered during the minor’s stay in a hospital when feasible. Prior to the discharge of the minor the juvenile court may, after a hearing, order that the minor’s family be evaluated and therapy ordered if necessary to facilitate the return of the minor to the family setting.

2001 Acts, ch 155, §29
Subsection 2 amended

229.13 Evaluation order — treatment — unauthorized departure or failure to appear.

1. If upon completion of the hospitalization hearing the court finds by clear and convincing evidence that the respondent has a serious mental impairment, the court shall order the respondent committed as expeditiously as possible for a complete psychiatric evaluation and appropriate treatment as follows:

a. The court shall order a respondent whose expenses are payable in whole or in part by a county placed under the care of an appropriate hospital or facility designated through the single entry point process on an inpatient or outpatient basis.

b. The court shall order any other respondent placed under the care of an appropriate hospital or facility licensed to care for persons with mental illness or substance abuse on an inpatient or outpatient basis.

2. The court shall provide notice to the respondent and the respondent’s attorney of the placement order under subsection 1. The court shall advise the respondent and the respondent’s attorney that the respondent has a right to request a placement hearing held in accordance with the requirements of section 229.14A.

3. If the respondent is ordered at a hearing to undergo outpatient treatment, the outpatient treatment provider must be notified and agree to provide the treatment prior to placement of the respondent under the treatment provider’s care.

4. The court shall furnish to the chief medical officer of the hospital or facility at the time the respondent arrives at the hospital or facility for inpatient or outpatient treatment a written finding of fact setting forth the evidence on which the find-

ing is based. If the respondent is ordered to undergo outpatient treatment, the order shall also require the respondent to cooperate with the treatment provider and comply with the course of treatment.

5. The chief medical officer of the hospital or facility at which the respondent is placed shall report to the court no more than fifteen days after the respondent is placed, making a recommendation for disposition of the matter. An extension of time may be granted, not to exceed seven days upon a showing of cause. A copy of the report shall be sent to the respondent’s attorney, who may contest the need for an extension of time if one is requested. An extension of time shall be granted upon request unless the request is contested, in which case the court shall make such inquiry as it deems appropriate and may either order the respondent’s release from the hospital or facility or grant an extension of time for psychiatric evaluation. If the chief medical officer fails to report to the court within fifteen days after the individual is placed under the care of the hospital or facility, and an extension of time has not been requested, the chief medical officer is guilty of contempt and shall be punished under chapter 665. The court shall order a rehearing on the application to determine whether the respondent should continue to be detained at or placed under the care of the facility.

6. If, after placement of a respondent in or under the care of a hospital or other suitable facility for inpatient treatment, the respondent departs from the hospital or facility or fails to appear for treatment as ordered without prior proper authorization from the chief medical officer, upon receipt of notification of the respondent’s departure or failure to appear by the chief medical officer, a peace officer of the state shall without further order of the court exercise all due diligence to take the respondent into protective custody and return the respondent to the hospital or facility.

2001 Acts, ch 155, §30
Section amended

229.14 Chief medical officer’s report.

1. The chief medical officer’s report to the court on the psychiatric evaluation of the respondent shall be made not later than the expiration of the time specified in section 229.13. At least two copies of the report shall be filed with the clerk, who shall dispose of them in the manner prescribed by section 229.10, subsection 2. The report shall state one of the four following alternative findings:

a. That the respondent does not, as of the date of the report, require further treatment for serious mental impairment. If the report so states, the court shall order the respondent’s immediate release from involuntary hospitalization and terminate the proceedings.

b. That the respondent is seriously mentally impaired and in need of full-time custody, care and

inpatient treatment in a hospital, and is considered likely to benefit from treatment. The report shall include the chief medical officer's recommendation for further treatment.

c. That the respondent is seriously mentally impaired and in need of treatment, but does not require full-time hospitalization. If the report so states, it shall include the chief medical officer's recommendation for treatment of the respondent on an outpatient or other appropriate basis.

d. The respondent is seriously mentally impaired and in need of full-time custody and care, but is unlikely to benefit from further inpatient treatment in a hospital. The report shall include the chief medical officer's recommendation for an appropriate alternative placement for the respondent.

2. Following receipt of the chief medical officer's report under subsection 1, paragraph "b", "c", or "d", the court shall issue an order for appropriate treatment as follows:

a. For a respondent whose expenses are payable in whole or in part by a county, placement as designated through the single entry point process in the care of an appropriate hospital or facility on an inpatient or outpatient basis, or other appropriate treatment, or in an appropriate alternative placement.

b. For any other respondent, placement in the care of an appropriate hospital or facility on an inpatient or outpatient basis, or other appropriate treatment, or an appropriate alternative placement.

c. For a respondent who is an inmate in the custody of the department of corrections, the court may order the respondent to receive mental health services in a correctional program.

d. If the court orders treatment of the respondent on an outpatient or other appropriate basis as described in the chief medical officer's report pursuant to subsection 1, paragraph "c", the order shall provide that, should the respondent fail or refuse to submit to treatment in accordance with the court's order, the court may order that the respondent be taken into immediate custody as provided by section 229.11 and, following notice and hearing held in accordance with the procedures of section 229.12, may order the respondent treated as on an inpatient basis requiring full-time custody, care, and treatment in a hospital until such time as the chief medical officer reports that the respondent does not require further treatment for serious mental impairment or has indicated the respondent is willing to submit to treatment on another basis as ordered by the court. If a patient is transferred for treatment to another provider under this paragraph, the treatment provider who will be providing the outpatient or other appropriate treatment shall be provided with relevant court orders by the former treatment provider.

2001 Acts, ch 155, §31
Section amended

229.14A Placement order — notice and hearing.

1. With respect to a chief medical officer's report made pursuant to section 229.14, subsection 1, paragraph "b", "c", or "d", or any other provision of this chapter related to involuntary commitment for which the court issues a placement order or a transfer of placement is authorized, the court shall provide notice to the respondent and the respondent's attorney or mental health advocate pursuant to section 229.19 concerning the placement order and the respondent's right to request a placement hearing to determine if the order for placement or transfer of placement is appropriate.

2. The notice shall provide that a request for a placement hearing must be in writing and filed with the clerk within seven days of issuance of the placement order.

3. A request for a placement hearing may be signed by the respondent, the respondent's next friend, guardian, or attorney.

4. The court, on its own motion, may order a placement hearing to be held.

5. a. A placement hearing shall be held no sooner than four days and no later than seven days after the request for the placement hearing is filed unless otherwise agreed to by the parties.

b. The respondent may be transferred to the placement designated by the court's placement order and receive treatment unless a request for hearing is filed prior to the transfer. If the request for a placement hearing is filed prior to the transfer, the court shall determine where the respondent shall be detained and treated until the date of the hearing.

c. If the respondent's attorney has withdrawn pursuant to section 229.19, the court shall appoint an attorney for the respondent in the manner described in section 229.8, subsection 1.

6. Time periods shall be calculated for the purposes of this section excluding weekends and official holidays.

7. If a respondent's expenses are payable in whole or in part by a county through the single entry point process, notice of a placement hearing shall be provided to the county attorney and the county's single entry point process administrator. At the hearing, the county may present evidence regarding appropriate placement.

8. In a placement hearing, the court shall determine a placement for the respondent in accordance with the requirements of section 229.23, taking into consideration the evidence presented by all the parties.

9. A placement made pursuant to an order entered under section 229.13 or 229.14 or this section shall be considered to be authorized through the single entry point process.

2001 Acts, ch 155, §33, 40
Former §229.14A transferred to §229.14B pursuant to directive in 2001 Acts, ch 155, §40
NEW section

229.14B Escape from custody.

A person who is placed in a hospital or other suitable facility for evaluation under section 229.13 or who is required to remain hospitalized for treatment under section 229.14 shall remain at that hospital or facility unless discharged or otherwise permitted to leave by the court or the chief medical officer of the hospital or facility. If a person placed at a hospital or facility or required to remain at a hospital or facility leaves the facility without permission or without having been discharged, the chief medical officer may notify the sheriff of the person's absence and the sheriff shall take the person into custody and return the person promptly to the hospital or facility.

2001 Acts, ch 155, §32, 40
Section transferred from §229.14A in Code Supplement 2001 pursuant to directive in 2001 Acts, ch 155, §40
Section amended

229.15 Periodic reports required.

1. Not more than thirty days after entry of an order for continued hospitalization of a patient under section 229.14, subsection 1, paragraph "b", and thereafter at successive intervals of not more than sixty days continuing so long as involuntary hospitalization of the patient continues, the chief medical officer of the hospital shall report to the court which entered the order. The report shall be submitted in the manner required by section 229.14, shall state whether the patient's condition has improved, remains unchanged, or has deteriorated, and shall indicate if possible the further length of time the patient will be required to remain at the hospital. The chief medical officer may at any time report to the court a finding as stated in section 229.14, subsection 1, and the court shall act upon the finding as required by section 229.14, subsection 2.

2. Not more than sixty days after the entry of a court order for treatment of a patient pursuant to a report issued under section 229.14, subsection 1, paragraph "c", and thereafter at successive intervals as ordered by the court but not to exceed ninety days so long as that court order remains in effect, the medical director of the facility treating the patient shall report to the court which entered the order. The report shall state whether the patient's condition has improved, remains unchanged, or has deteriorated, and shall indicate if possible the further length of time the patient will require treatment by the facility. If at any time the patient without good cause fails or refuses to submit to treatment as ordered by the court, the medical director shall at once so notify the court, which shall order the patient hospitalized as provided by section 229.14, subsection 2, paragraph "d", unless the court finds that the failure or refusal was with good cause and that the patient is willing to receive treatment as provided in the court's order, or in a revised order if the court sees fit to enter one. If at any time the medical director reports to

the court that in the director's opinion the patient requires full-time custody, care and treatment in a hospital, and the patient is willing to be admitted voluntarily to the hospital for these purposes, the court may enter an order approving hospitalization for appropriate treatment upon consultation with the chief medical officer of the hospital in which the patient is to be hospitalized. If the patient is unwilling to be admitted voluntarily to the hospital, the procedure for determining involuntary hospitalization, as set out in section 229.14, subsection 2, paragraph "d", shall be followed.

3. When a patient has been placed in an alternative facility other than a hospital pursuant to a report issued under section 229.14, subsection 1, paragraph "d", a report on the patient's condition and prognosis shall be made to the court which placed the patient, at least once every six months, unless the court authorizes annual reports. If an evaluation of the patient is performed pursuant to section 227.2, subsection 4, a copy of the evaluation report shall be submitted to the court within fifteen days of the evaluation's completion. The court may in its discretion waive the requirement of an additional report between the annual evaluations. If the administrator exercises the authority to remove residents from a county care facility or other county or private institution under section 227.6, the administrator shall promptly notify each court which placed in that facility any resident so removed.

4. *a.* When in the opinion of the chief medical officer the best interest of a patient would be served by a convalescent or limited leave, the chief medical officer may authorize the leave and, if authorized, shall promptly report the leave to the court. When in the opinion of the chief medical officer the best interest of a patient would be served by a transfer to a different hospital for continued full-time custody, care, and treatment, the chief medical officer shall promptly send a report to the court. The court shall act upon the report in accordance with section 229.14A.

b. This subsection shall not be construed to add to or restrict the authority otherwise provided by law for transfer of patients or residents among various state institutions administered by the department of human services. If a patient is transferred under this subsection, the treatment provider to whom the patient is transferred shall be provided with copies of relevant court orders by the former treatment provider.

5. Upon receipt of any report required or authorized by this section the court shall furnish a copy to the patient's attorney, or alternatively to the advocate appointed as required by section 229.19. The court shall examine the report and take the action thereon which it deems appropriate. Should the court fail to receive any report required by this section or section 229.14 at the time the report is due, the court shall investigate the

reason for the failure to report and take whatever action may be necessary in the matter.

2001 Acts, ch 155, §34, 35
Subsections 1 – 3 amended
Subsection 4 stricken and rewritten

229.16 Discharge and termination of proceeding.

When the condition of a patient who is hospitalized pursuant to a report issued under section 229.14, subsection 1, paragraph “b”, or is receiving treatment pursuant to a report issued under section 229.14, subsection 1, paragraph “c”, or is in full-time care and custody pursuant to a report issued under section 229.14, subsection 1, paragraph “d”, is such that in the opinion of the chief medical officer the patient no longer requires treatment or care for serious mental impairment, the chief medical officer shall tentatively discharge the patient and immediately report that fact to the court which ordered the patient’s hospitalization or care and custody. Upon receiving the report, the court shall issue an order confirming the patient’s discharge from the hospital or from care and custody, as the case may be, and shall terminate the proceedings pursuant to which the order was issued. Copies of the order shall be sent by regular mail to the hospital, the patient, and the applicant if the applicant has filed a written waiver signed by the patient.

2001 Acts, ch 155, §36
Section amended

229.17 Status of respondent during appeal.

If a respondent appeals to the supreme court from a finding that the contention the respondent is seriously mentally impaired has been sustained, and the respondent was previously ordered taken into immediate custody under section 229.11 or has been hospitalized for psychiatric evaluation and appropriate treatment under section 229.13 before the court is informed of intent to appeal its finding, the respondent shall remain in custody as previously ordered by the court, the time limit stated in section 229.11 notwithstanding, or shall remain in the hospital subject to compliance by the hospital with sections 229.13 to 229.16, as the case may be, unless the supreme court orders otherwise. If a respondent appeals to the supreme court regarding a placement order, the respondent shall remain in placement unless the supreme court orders otherwise.

2001 Acts, ch 155, §37
Section amended

229.21 Judicial hospitalization referee — appeals to district court.

1. The chief judge of each judicial district may appoint at least one judicial hospitalization referee for each county within the district. The judicial hospitalization referee shall be an attorney, licensed to practice law in this state, who shall be

chosen with consideration to any training, experience, interest, or combination of those factors, which are pertinent to the duties of the office. The referee shall hold office at the pleasure of the chief judge of the judicial district and receive compensation at a rate fixed by the supreme court. If the referee expects to be absent for any significant length of time, the referee shall inform the chief judge who may appoint a temporary substitute judicial hospitalization referee having the qualifications set forth in this subsection.

2. When an application for involuntary hospitalization under this chapter or an application for involuntary commitment or treatment of chronic substance abusers under sections 125.75 to 125.94 is filed with the clerk of the district court in any county for which a judicial hospitalization referee has been appointed, and no district judge, district associate judge, or magistrate who is admitted to the practice of law in this state is accessible, the clerk shall immediately notify the referee in the manner required by section 229.7 or section 125.77. The referee shall discharge all of the duties imposed upon the court by sections 229.7 to 229.22 or sections 125.75 to 125.94 in the proceeding so initiated. Subject to the provisions of subsection 4, orders issued by a referee, in discharge of duties imposed under this section, shall have the same force and effect as if ordered by a district judge. However, any commitment to a facility regulated and operated under chapter 135C, shall be in accordance with section 135C.23.

3. *a.* Any respondent with respect to whom the magistrate or judicial hospitalization referee has found the contention that the respondent is seriously mentally impaired or a chronic substance abuser sustained by clear and convincing evidence presented at a hearing held under section 229.12 or section 125.82, may appeal from the magistrate’s or referee’s finding to a judge of the district court by giving the clerk notice in writing, within ten days after the magistrate’s or referee’s finding is made, that an appeal is taken. The appeal may be signed by the respondent or by the respondent’s next friend, guardian, or attorney.

b. An order of a magistrate or judicial hospitalization referee with a finding that the respondent is seriously mentally impaired or a chronic substance abuser shall include the following notice, located conspicuously on the face of the order:

“NOTE: The respondent may appeal from this order to a judge of the district court by giving written notice of the appeal to the clerk of the district court within ten days after the date of this order. The appeal may be signed by the respondent or by the respondent’s next friend, guardian, or attorney. For a more complete description of the respondent’s appeal rights, consult section 229.21 of the Code of Iowa or an attorney.”

c. When appealed, the matter shall stand for trial de novo. Upon appeal, the court shall schedule

a hospitalization or commitment hearing before a district judge at the earliest practicable time.

d. Any respondent with respect to whom the magistrate or judicial hospitalization referee has held a placement hearing and has entered a placement order may appeal the order to a judge of the district court. The request for appeal must be given to the clerk in writing within ten days of the entry of the magistrate's or referee's order. The request for appeal shall be signed by the respondent, or the respondent's next friend, guardian, or attorney.

4. If the appellant is in custody under the jurisdiction of the district court at the time of service of the notice of appeal, the appellant shall be discharged from custody unless an order that the appellant be taken into immediate custody has previously been issued under section 229.11 or section 125.81, in which case the appellant shall be detained as provided in that section until the hospitalization or commitment hearing before the district judge. If the appellant is in the custody of a hospital or facility at the time of service of the notice of appeal, the appellant shall be discharged from custody pending disposition of the appeal unless the chief medical officer, not later than the end of the next secular day on which the office of the clerk is open and which follows service of the notice of appeal, files with the clerk a certification that in the chief medical officer's opinion the appellant is seriously mentally ill or a substance abuser. In that case, the appellant shall remain in custody of the hospital or facility until the hospitalization or commitment hearing before the district court.

5. The hospitalization or commitment hearing before the district judge shall be held, and the judge's finding shall be made and an appropriate order entered, as prescribed by sections 229.12 and 229.13 or sections 125.82 and 125.83. If the judge orders the appellant hospitalized or committed for a complete psychiatric or substance abuse evaluation, jurisdiction of the matter shall revert to the judicial hospitalization referee.

2001 Acts, ch 155, §38
Subsection 3, NEW paragraph d

229.28 Hospitalization in certain federal facilities.

When a court finds that the contention that a respondent is seriously mentally impaired has been sustained or proposes to order continued hospitalization of any person, or an alternative placement, as described under section 229.14, subsection 1, paragraph "b" or "d", and the court is furnished evidence that the respondent or patient is eligible for care and treatment in a facility operated by the veterans administration or another agency of the United States government and that the facility is willing to receive the respondent or patient, the court may so order. The respondent or patient, when so hospitalized or placed in a facility operated by the veterans administration or another

agency of the United States government within or outside of this state, shall be subject to the rules of the veterans administration or other agency, but shall not thereby lose any procedural rights afforded the respondent or patient by this chapter. The chief officer of the facility shall have, with respect to the person so hospitalized or placed, the same powers and duties as the chief medical officer of a hospital in this state would have in regard to submission of reports to the court, retention of custody, transfer, convalescent leave or discharge. Jurisdiction is retained in the court to maintain surveillance of the person's treatment and care, and at any time to inquire into that person's mental condition and the need for continued hospitalization or care and custody.

2001 Acts, ch 155, §39
Section amended

229.41 Voluntary admission.

Persons making application pursuant to section 229.2 on their own behalf or on behalf of another person who is under eighteen years of age, if the person whose admission is sought is received for observation and treatment on the application, shall be required to pay the costs of hospitalization at rates established by the administrator. The costs may be collected weekly in advance and shall be payable at the business office of the hospital. The collections shall be remitted to the department of human services monthly to be credited to the general fund of the state.

2001 Acts, ch 155, §21
Section amended

229.42 Costs paid by county.

If a person wishing to make application for voluntary admission to a mental hospital established by chapter 226 is unable to pay the costs of hospitalization or those responsible for the person are unable to pay the costs, application for authorization of voluntary admission must be made through a single entry point process before application for admission is made to the hospital. The person's county of legal settlement shall be determined through the single entry point process and if the admission is approved through the single entry point process, the person's admission to a mental health hospital shall be authorized as a voluntary case. The authorization shall be issued on forms provided by the administrator. The costs of the hospitalization shall be paid by the county of legal settlement to the department of human services and credited to the general fund of the state, providing the mental health hospital rendering the services has certified to the county auditor of the county of legal settlement the amount chargeable to the county and has sent a duplicate statement of the charges to the department of human services. A county shall not be billed for the cost of a patient unless the patient's admission is authorized through the single entry point process. The mental health institute and the county shall work

together to locate appropriate alternative placements and services, and to educate patients and family members of patients regarding such alternatives.

All the provisions of chapter 230 shall apply to such voluntary patients so far as is applicable.

The provisions of this section and of section 229.41 shall apply to all voluntary inpatients or outpatients either away from or at the institution receiving mental health services.

If a county fails to pay the billed charges within

forty-five days from the date the county auditor received the certification statement from the superintendent, the department of human services shall charge the delinquent county the penalty of one percent per month on and after forty-five days from the date the county received the certification statement until paid. The penalties received shall be credited to the general fund of the state.

2001 Acts, ch 155, §22
Section amended

CHAPTER 229A

COMMITMENT OF SEXUALLY VIOLENT PREDATORS

229A.5B Escape from custody.

1. A respondent who is in custody under this chapter shall remain in custody unless released by court order or discharged under section 229A.10. A respondent in custody under this chapter shall not do any of the following:

a. Leave or attempt to leave a facility without the accompaniment of authorized personnel.

b. Knowingly and voluntarily be absent from a place where the respondent is required to be present.

c. Leave or attempt to leave the custody of personnel transporting or guarding the respondent while the respondent is away from a facility.

2. A respondent who violates subsection 1 commits a simple misdemeanor or may be subject to punishment for contempt. If the respondent pleads guilty to, or is convicted of, an offense under this section, or is found in contempt, or both, and

is sentenced to a term of confinement, the civil commitment proceedings or treatment process may be stayed by court order until the term of confinement is served by the respondent.

3. If a respondent commits a violation of subsection 1 and remains unconfined, the attorney general or the chief law enforcement officer of the political subdivision where the violation occurs may make a public announcement that the respondent is unconfined and may provide relevant information about the respondent to the community. The attorney general may also notify a victim or the family of a victim of the respondent that the respondent is unconfined.

4. This section shall not be construed to prohibit the use of the interstate compact on mental health as provided in chapter 221.

2001 Acts, ch 27, §1
NEW section

CHAPTER 230

SUPPORT OF PERSONS WITH MENTAL ILLNESS

Obligation to pay for costs of service rendered prior to July 1, 1997; disputed billings; see 2001 Acts, ch 155, §12, 13

230.10 Payment of costs.

All legal costs and expenses attending the taking into custody, care, investigation, and admission or commitment of a person to a state hospital for persons with mental illness under a finding that such person has a legal settlement in another county of this state shall be charged against the county of legal settlement.

Obligation to pay for costs of service rendered prior to July 1, 1997; disputed billings; see 2001 Acts, ch 155, §12, 13
Section not amended; footnote added

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 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 per-

centage 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. *a.* The superintendent shall certify to the department the billings to each county for services provided to patients chargeable to the county during the preceding calendar quarter. The county billings shall be based on the average daily patient charge and other service charges computed pursuant to subsection 1, and the number of inpatient days and other service units chargeable to the county. However, a county billing shall be decreased by an amount equal to reimbursement by a third party payor or estimation of such reimbursement from a claim submitted by the superintendent to the third party payor for the preceding calendar quarter. When the actual third party payor reimbursement is greater or less than estimated, the difference shall be reflected in the county billing in the calendar quarter the actual third party payor reimbursement is determined.

b. The per diem costs billed to each county shall not exceed the per diem costs billed to the county in the fiscal year beginning July 1, 1996. However, the per diem costs billed to a county may be adjusted annually to reflect increased costs to the extent of the percentage increase in the total of county fixed budgets pursuant to the allowed growth factor adjustment authorized by the general assembly for the fiscal year in accordance with section 331.439.

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 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 department 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 department 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 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 request that the director of human services enter into a contract with a person for the mental health institute to provide consultation or treatment services or for fulfilling other purposes which are consistent with the purposes stated in section 226.1. The contract provisions shall include charges which reflect the actual cost of providing the services or fulfilling the other purposes. 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.

2001 Acts, ch 155, §23 – 25
Obligation to pay for costs of services rendered prior to July 1, 1997; disputed billings; see 2001 Acts, ch 155, §12, 13
Subsection 1, unnumbered paragraph 1 amended
Subsection 2, paragraph a amended
Subsections 4 and 5 amended

230.22 Penalty.

Should any county fail to pay the amount billed by a statement submitted pursuant to section 230.20 within forty-five days from the date the statement is received by the county, the department shall charge the delinquent county the penalty of one percent per month on and after forty-

five days from the date the statement is received by the county until paid. Provided, however, that the penalty shall not be imposed if the county has notified the department of error or questionable items in the billing, in which event, the department shall suspend the penalty only during the period of negotiation.

2001 Acts, ch 155, §26
Section amended

230.34 Definitions.

1. As used in this chapter, “*administrator*” means the administrator of the department of human services assigned, in accordance with section 218.1, to control the state mental health institutes, or that administrator’s designee.

2. As used in this chapter, “*auditor*” means the county auditor or the auditor’s designee.

3. As used in this chapter, unless the context otherwise requires, “*book*”, “*list*”, “*record*”, or “*schedule*” kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

4. As used in this chapter, unless the context otherwise requires, “*department*” means the department of human services.

2001 Acts, ch 155, §27
NEW subsection 4

CHAPTER 230A

COMMUNITY MENTAL HEALTH CENTERS

230A.3 Forms of organization.

Each community mental health center established or continued in operation as authorized by section 230A.1 shall be organized and administered in accordance with one of the following alternative forms:

1. Direct establishment of the center by the county or counties supporting it and administration of the center by an elected board of trustees,

pursuant to sections 230A.4 to 230A.11.

2. Establishment of the center by a nonprofit corporation providing services to the county or counties on the basis of an agreement with the board or boards of supervisors, pursuant to sections 230A.12 and 230A.13.

98 Acts, ch 1181, §5
1998 amendment striking subsection 3 is effective July 1, 2001; 1998 Acts, ch 1181, §5
Subsection 3 stricken

CHAPTER 231

DEPARTMENT OF ELDER AFFAIRS — ELDER IOWANS

231.53 Coordination with Job Training Partnership Act. Repealed by 2001 Acts, ch 61, § 19.

231.61 Adult day services requirements — oversight.

1. As used in this section, unless the context otherwise requires, “*adult day services*” means personal care services provided on a planned basis

in a supervised, protective, congregate setting during some portion of the twenty-four hour day. Services offered as adult day services may include but are not limited to social, recreational, or health services, support services such as training and counseling, meals, medication assistance, rehabilitation services, and home health aide services. Adult day services provided in an existing facility must have separate and distinct staff, hours of operation, and designated space.

2. The department shall establish, in cooperation with the department of inspections and appeals, the department of human services, the Iowa department of public health, the area agencies on aging, industry representatives, and consumers, a system of oversight for all adult day services in the state. The system shall address, but is not limited to, all of the following:

- a. Requirements for the operation of adult day services.
- b. Oversight measures including evaluation of

adult day services and assessment of compliance with rules for adult day services.

- c. A system for formal investigation of consumer complaints relating to adult day services.
- d. Coordination of requirements and funding sources available to adult day services.
- 3. The department shall adopt rules pursuant to chapter 17A to implement the system.

2001 Acts, ch 64, §6
 System to be implemented on July 1, 2002, or upon appropriation of funding; 2001 Acts, ch 64, §12
 NEW section

CHAPTER 231C

ASSISTED LIVING PROGRAMS

231C.3 Certification or voluntary accreditation of assisted living programs.

1. The department shall establish, by rule in accordance with chapter 17A, a program for certification and monitoring of assisted living programs. An assisted living program which is voluntarily accredited is not required to also be certified by the department and the department shall accept voluntary accreditation in lieu of certification by the department. An assisted living program certified or voluntarily accredited under this section is exempt from the requirements of section 135.63 relating to certificate of need requirements.

2. Each assisted living program operating in the state shall be certified with the department or shall be voluntarily accredited. The owner or manager of a certified assisted living program shall comply with the rules adopted by the department for an assisted living program. A person shall not represent an assisted living program to the public as a certified or voluntarily accredited program unless the program is certified or volun-

tarily accredited pursuant to this chapter.

3. Services provided by a certified or voluntarily accredited assisted living program may be provided directly by staff of the assisted living program, by individuals contracting with the assisted living program to provide services, or by individuals employed by the tenant or with whom the tenant contracts if the tenant agrees to assume the responsibility and risk of the employment or the contractual relationship.

4. The department may enter into contracts to provide certification and monitoring of assisted living programs. The department shall have full access to a program during certification and monitoring of programs seeking certification or currently certified. Upon the request of the department the entity providing accreditation of a program shall provide copies to the department of all materials related to the accreditation process.

Exception to allow for compliance by applicants for assisted living certification with chapter 104A relative to buildings in existence on July 1, 1998; modification of accessibility requirements; 99 Acts, ch 201, §3; 2000 Acts, ch 1222, §3; 2001 Acts, ch 182, §3
 Section not amended; footnote revised

CHAPTER 232

JUVENILE JUSTICE

232.2 Definitions.

As used in this chapter unless the context otherwise requires:

- 1. “*Abandonment of a child*” means the relinquishment or surrender, without reference to any particular person, of the parental rights, duties, or privileges inherent in the parent-child relationship. Proof of abandonment must include both the intention to abandon and the acts by which the intention is evidenced. The term does not require that the relinquishment or surrender be over any particular period of time.
- 2. “*Adjudicatory hearing*” means a hearing to

determine if the allegations of a petition are true.

- 3. “*Adult*” means a person other than a child.
- 4. “*Case permanency plan*” means the plan, mandated by Pub. L. No. 96-272 and Pub. L. No. 105-89, as codified in 42 U.S.C. § 622(b)(10), 671(a)(16), and 675(1),(5), which is designed to achieve placement in the most appropriate, least restrictive, and 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.

h. If reasonable efforts to place a child for adoption or with a guardian are made concurrently with reasonable efforts as defined in section 232.102, the concurrent goals and timelines may be identified. Concurrent case permanency plan goals for reunification, and for adoption or for other permanent out-of-home placement of a child shall not be considered inconsistent in that the goals reflect divergent possible outcomes for a child in an out-of-home placement.

i. A provision that a designee of the department or other person responsible for placement of a child out-of-state shall visit the child at least once every twelve months.

j. If it has been determined that the child cannot return to the child's home, documentation of the steps taken to make and finalize an adoption or other permanent placement.

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

6. "*Child in need of assistance*" means an unmarried child:

a. Whose parent, guardian or other custodian has abandoned or deserted the child.

b. Whose parent, guardian, other custodian, or

other member of the household in which the child resides has physically abused or neglected the child, or is imminently likely to abuse or neglect the child.

c. Who has suffered or is imminently likely to suffer harmful effects as a result of either of the following:

(1) Mental injury caused by the acts of the child's parent, guardian, or custodian.

(2) The failure of the child's parent, guardian, custodian, or other member of the household in which the child resides to exercise a reasonable degree of care in supervising the child.

d. Who has been, 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. In whose body there is an illegal drug present as a direct and foreseeable consequence of the

acts or omissions of the child's parent, guardian, or custodian. The presence of the drug shall be determined in accordance with a medically relevant test as defined in section 232.73.

p. Whose parent, guardian, or custodian does any of the following: unlawfully manufactures a dangerous substance in the presence of a child, knowingly allows such manufacture by another person in the presence of a child, or in the presence of a child possesses a product containing ephedrine, its salts, optical isomers, salts of optical isomers, or pseudoephedrine, its salts, optical isomers, salts of optical isomers, with the intent to use the product as a precursor or an intermediary to a dangerous substance.

(1) For the purposes of this paragraph, "*in the presence of a child*" means the physical presence of a child during the manufacture or possession, the manufacture or possession occurred in a child's home, on the premises, or in a motor vehicle located on the premises, or the manufacture or possession occurred under other circumstances in which a reasonably prudent person would know that the manufacture or possession may be seen, smelled, or heard by a child.

(2) For the purposes of this paragraph, "*dangerous substance*" means any of the following:

(a) Amphetamine, its salts, isomers, or salts of its isomers.

(b) Methamphetamine, its salts, isomers, or salts of its isomers.

(c) A chemical or combination of chemicals that poses a reasonable risk of causing an explosion, fire, or other danger to the life or health of persons who are in the vicinity while the chemical or combination of chemicals is used or is intended to be used in any of the following:

(i) The process of manufacturing an illegal or controlled substance.

(ii) As a precursor in the manufacturing of an illegal or controlled substance.

(iii) As an intermediary in the manufacturing of an illegal or controlled substance.

q. Who is a newborn infant whose parent has voluntarily released custody of the child in accordance with chapter 233.

6A. "*Chronic runaway*" means a child who is reported to law enforcement as a runaway more than once in any thirty-day period or three or more times in any year.

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 branch 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 wit-

ness 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.

c. The violation of section 123.47 which is committed by a child.

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 have a permanent self-sustaining relationship with the child and 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.

f. To make other decisions involving protection, education, and care and control of the child.

22. a. “*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.

b. 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:

(1) Conducting in-person interviews with the child, if the child’s age is appropriate for the interview, and interviewing each parent, guardian, or other person having custody of the child, if authorized by counsel.

(2) Conducting interviews with the child, if the child’s age is appropriate for the interview, prior to any court-ordered hearing.

(3) Visiting the home, residence, or both home and residence of the child and any prospective home or residence of the child, including each time placement is changed.

(4) Interviewing any person providing medical, mental health, social, educational, or other services to the child, before any hearing referred to in subparagraph (2).

(5) Obtaining firsthand knowledge, if possible, of the facts, circumstances, and parties involved in the matter in which the person is appointed guardian ad litem.

(6) Attending any hearings in the matter in which the person is appointed as the guardian ad litem.

c. The order appointing the guardian ad litem shall grant authorization to the guardian ad litem to interview any relevant person and inspect and copy any records relevant to the proceedings, if not prohibited by federal law. The order shall specify that the guardian ad litem may interview any person providing medical, mental health, social, educational, or other services to the child, may attend any departmental staff meeting, case conference, or meeting with medical or mental health providers, service providers, organizations, or educational institutions regarding the child, if deemed necessary by the guardian ad litem, and may inspect and copy any records relevant to the proceedings.

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, predisposition 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.

42A. “*Preadoptive care*” means the provision of parental nurturing on a full-time basis to a child in foster care by a person who has signed a pre-adoptive placement agreement with the department for the purposes of proceeding with a legal adoption of the child. Parental nurturing includes but is not limited to furnishing of food, lodging, training, education, treatment, and other care.

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.

2001 Acts, ch 46, §1; 2001 Acts, ch 67, §7, 13
Subsection 6, NEW paragraphs p and q

232.21 Placement in shelter care.

1. No child shall be placed in shelter care unless one of the following circumstances applies:

a. The child has no parent, guardian, custodian, responsible adult relative or other adult approved by the court who will provide proper shelter, care and supervision.

b. The child desires to be placed in shelter care.

c. It is necessary to hold the child until the child’s parent, guardian, or custodian has been contacted and has taken custody of the child.

d. It is necessary to hold the child for transfer to another jurisdiction.

e. The child is being placed pursuant to an order of the court.

2. A child may be placed in shelter care as provided in this section only in one of the following facilities:

a. A juvenile shelter care home.

b. A licensed foster home.

c. An institution or other facility operated by the department of human services, or one which is licensed or otherwise authorized by law to receive and provide care for the child.

d. Any other suitable place designated by the

court provided that no place used for the detention of a child may be so designated.

Placement shall be made in the least restrictive facility available consistent with the best interests and special needs of the child. Foster family care shall be used for a child unless the child has problems requiring specialized service or supervision which cannot be provided in a family living arrangement.

3. When there is reason to believe that a child placed in shelter care pursuant to section 232.19, subsection 1, paragraph “c” would not voluntarily remain in the shelter care facility, the shelter care facility shall impose reasonable restrictions necessary to ensure the child’s continued custody.

4. A child placed in a shelter care facility under this section shall not be held for a period in excess of forty-eight hours without an oral or written court order authorizing the shelter care. When the action 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. A child placed in shelter care pursuant to section 232.19, subsection 1, paragraph “c”, shall not be held in excess of seventy-two hours in any event. If deemed appropriate by the court, an order authorizing shelter care placement may include a determination that continuation of the child in the child’s home is contrary to the child’s welfare and that reasonable efforts as defined in section 232.57 have been made. The inclusion of such a determination shall not under any circumstances be deemed a prerequisite for entering an order pursuant to this section. However, the inclusion of such a determination, supported by the record, may assist the department in obtaining federal funding for the child’s placement.

5. If no satisfactory provision is made for uniting a child placed in shelter care pursuant to section 232.19, subsection 1, paragraph “c” with the child’s family, a child in need of assistance complaint may be filed pursuant to section 232.81. Nothing in this subsection shall limit the right of a child to file a family in need of assistance petition under section 232.125.

6. A child twelve years of age or younger shall not be placed in a group shelter care home, unless there have been reasonable but unsuccessful efforts to place the child in an emergency foster family home which is able to meet the needs of the child. The efforts shall be documented at the shelter care hearing.

2001 Acts, ch 135, §5; 2001 Acts, ch 176, §64
Subsection 4 amended

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*”, or section 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, or salts of isomers, or analogs of methamphetamine, and if the act was committed by an adult, it would be a violation of section 124.401, subsection 1.

f. A dispositional order has been entered under section 232.52 placing the child in secure custody in a facility defined in subsection 3, 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. If deemed appropriate by the court, an order for placement of a child in detention may include a determination that continuation of the child in the child’s home is contrary to the child’s welfare and that reasonable efforts as defined in section 232.57 have been made. The inclusion of such a determination shall not under any circumstances be deemed a prerequisite for entering an order pursuant to this section. However, the inclusion

of such a determination, supported by the record, may assist the department in obtaining federal funding for the child’s placement.

3. Except as provided in subsection 7, 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.

4. A child shall not be held in a facility under subsection 3, 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.

5. A child shall not be detained in a facility under subsection 3, 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 3, 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 3, 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.

6. 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.

7. 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 post-arrest or pretrial detainees.

8. Notwithstanding any other provision of the Code to the contrary, a child shall not be placed in detention for a violation of section 123.47, or for failure to comply with a dispositional order which provides for performance of community service for a violation of section 123.47.

2001 Acts, ch 135, §6

NEW subsection 2 and former subsections 2 – 7 renumbered as 3 – 8

232.23 Detention — youthful offenders.

1. After waiver of a child who will be prosecuted as a youthful offender, the child shall be held

in a facility under section 232.22, subsection 3, paragraph “a” or “b”, unless released in accordance with subsection 2.

2. a. The court shall determine, at the detention hearing under section 232.44, the amount of bail, appearance bond, or other conditions necessary for a child who has been waived for prosecution as a youthful offender to be released from detention or that the child should not be released from detention.

b. A child placed in detention or released under this subsection shall be supervised by a juvenile court officer or juvenile court services personnel.

c. An order under this section may be reviewed by the court upon motion of either party.

Section not amended; internal reference change applied

232.45 Waiver hearing and waiver of jurisdiction.

1. After the filing of a petition which alleges that a child has committed a delinquent act on the basis of an alleged commission of a public offense and before an adjudicatory hearing on the merits of the petition is held, the county attorney or the child may file a motion requesting the court to waive its jurisdiction over the child for the alleged commission of the public offense or for the purpose of prosecution of the child as an adult or a youthful offender. If the county attorney and the child agree, a motion for waiver for the purpose of being prosecuted as a youthful offender may be heard by the district court as part of the proceedings under section 907.3A, or by the juvenile court as provided in this section. If the motion for waiver for the purpose of being prosecuted as a youthful offender is made as a result of a conditional agreement between the county attorney and the child, the conditions of the agreement shall be disclosed to the court in the same manner as provided in rules 8 and 9 of the Iowa rules of criminal procedure.

2. The court shall hold a waiver hearing on all such motions.

3. Reasonable notice that states the time, place, and purpose of the waiver hearing shall be provided to the persons required to be provided notice for adjudicatory hearings under section 232.37. Summons, subpoenas, and other process may be issued and served in the same manner as for adjudicatory hearings as provided in section 232.37.

4. Prior to the waiver hearing, the juvenile probation officer or other person or agency designated by the court shall conduct an investigation for the purpose of collecting information relevant to the court’s decision to waive its jurisdiction over the child for the alleged commission of the public offense and shall submit a report concerning the investigation to the court. The report shall include any recommendations made concerning waiver. Prior to the hearing the court shall provide the child’s counsel and the county attorney with ac-

cess to the report and to all written material to be considered by the court.

5. At the waiver hearing all relevant and material evidence shall be admitted.

6. At the conclusion of the waiver hearing the court may waive its jurisdiction over the child for the alleged commission of the public offense if all of the following apply:

a. The child is fourteen years of age or older.

b. The court determines, or has previously determined in a detention hearing under section 232.44, that there is probable cause to believe that the child has committed a delinquent act which would constitute the public offense.

c. The court determines that the state has established that there are not reasonable prospects for rehabilitating the child if the juvenile court retains jurisdiction over the child and the child is adjudicated to have committed the delinquent act, and that waiver of the court's jurisdiction over the child for the alleged commission of the public offense would be in the best interests of the child and the community.

7. At the conclusion of the waiver hearing and after considering the best interests of the child and the best interests of the community the court may, in order that the child may be prosecuted as a youthful offender, waive its jurisdiction over the child if all of the following apply:

a. The child is fifteen years of age or younger.

b. The court determines, or has previously determined in a detention hearing under section 232.44, that there is probable cause to believe that the child has committed a delinquent act which would constitute a public offense under section 232.8, subsection 1, paragraph "c", notwithstanding the application of that paragraph to children aged sixteen or older.

c. The court determines that the state has established that there are not reasonable prospects for rehabilitating the child, prior to the child's eighteenth birthday, if the juvenile court retains jurisdiction over the child and the child enters into a plea agreement, is a party to a consent decree, or is adjudicated to have committed the delinquent act.

The court shall retain jurisdiction over the child for the purpose of determining whether the child should be released from detention under section 232.23. If the court has been apprised of conditions of an agreement between the county attorney and the child which resulted in a motion for waiver for purposes of the child being prosecuted as a youthful offender, and the court finds that the conditions are in the best interests of the child, the conditions of the agreement shall constitute conditions of the waiver order.

8. In making the determination required by subsection 6, paragraph "c", the factors which the court shall consider include but are not limited to the following:

a. The nature of the alleged delinquent act and

the circumstances under which it was committed.

b. The nature and extent of the child's prior contacts with juvenile authorities, including past efforts of such authorities to treat and rehabilitate the child and the response to such efforts.

c. The programs, facilities and personnel available to the juvenile court for rehabilitation and treatment of the child, and the programs, facilities and personnel which would be available to the court that would have jurisdiction in the event the juvenile court waives its jurisdiction so that the child can be prosecuted as an adult.

9. In making the determination required by subsection 7, paragraph "c", the factors which the court shall consider include but are not limited to the following:

a. The nature of the alleged delinquent act and the circumstances under which it was committed.

b. The nature and extent of the child's prior contacts with juvenile authorities, including past efforts of such authorities to treat and rehabilitate the child and the response to such efforts.

c. The age of the child, the programs, facilities, and personnel available to the juvenile court for rehabilitation and treatment of the child, and the programs, facilities, and personnel which would be available to the district court after the child reaches the age of eighteen in the event the child is given youthful offender status.

10. If at the conclusion of the hearing the court waives its jurisdiction over the child for the alleged commission of the public offense, the court shall make and file written findings as to its reasons for waiving its jurisdiction.

11. If the court waives jurisdiction, statements made by the child after being taken into custody and prior to intake are admissible as evidence in chief against the child in subsequent criminal proceedings provided that the statements were made with the advice of the child's counsel or after waiver of the child's right to counsel and provided that the court finds the child had voluntarily waived the right to remain silent. Other statements made by a child are admissible as evidence in chief provided that the court finds the statements were voluntary. In making its determination, the court may consider any factors it finds relevant and shall consider the following factors:

a. Opportunity for the child to consult with a parent, guardian, custodian, lawyer or other adult.

b. The age of the child.

c. The child's level of education.

d. The child's level of intelligence.

e. Whether the child was advised of the child's constitutional rights.

f. Length of time the child was held in shelter care or detention before making the statement in question.

g. The nature of the questioning which elicited the statement.

h. Whether physical punishment such as de-

privation of food or sleep was used upon the child during the shelter care, detention, or questioning.

Statements made by the child during intake or at a waiver hearing held pursuant to this section are not admissible as evidence in chief against the child in subsequent criminal proceedings over the child's objection in any event.

12. If the court waives its jurisdiction over the child for the alleged commission of the public offense so that the child may be prosecuted as an adult or a youthful offender, the judge who made the waiver decision shall not preside at any subsequent proceedings in connection with that prosecution if the child objects.

13. The waiver does not apply to other delinquent acts which are not alleged in the delinquency petition presented at the waiver hearing.

14. If a child who is alleged to have delivered, manufactured, or possessed with intent to deliver or manufacture, a controlled substance except marijuana, as defined in chapter 124, is waived to district court for prosecution, the mandatory minimum sentence provided in section 124.413 shall not be imposed if a conviction is had; however, each child convicted of such an offense shall be confined for not less than thirty days in a secure facility.

Upon application of a person charged or convicted under the authority of this subsection, the district court shall order the records in the case sealed if:

a. Five years have elapsed since the final discharge of that person; and

b. The person has not been convicted of a felony or an aggravated or serious misdemeanor, or adjudicated a delinquent for an act which if committed by an adult would be a felony, or an aggravated or serious misdemeanor since the final discharge of that person.

2001 Acts, ch 135, §26
Age of majority deemed attained for certain purposes during incarceration following waiver and conviction; see §599.1
Subsection 3 amended

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, the child's prior record, or the fact that the child has received a youthful offender deferred sentence under section 907.3A. 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. In the case of a child who has received a youthful offender deferred sentence, the initial duration of the dispositional order shall be until the child reaches the age of eighteen.

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 or revocation of the driver's license or operating privilege of the child, for a period of one year, for the commission of delinquent acts which are a violation of any of the following:

(a) Section 123.46.

(b) Section 123.47 regarding the purchase or attempt to purchase of alcoholic beverages.

(c) Chapter 124.

(d) Section 126.3.

(e) Chapter 453B.

(f) Two or more violations of section 123.47 regarding the possession of alcoholic beverages.

(g) Section 708.1, if the assault is committed upon an employee of the school at which the child is enrolled, and the child intended to inflict serious injury upon the school employee or caused bodily injury or mental illness.

(h) Section 724.4, if the child carried the dangerous weapon on school grounds.

(i) Section 724.4B.

The child may be issued a temporary restricted license or school license if the child is otherwise eligible.

(5) The suspension of the driver's 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 treat-

ment 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.

(4) The chief juvenile court officer or the officer's designee for placement in a program under section 232.191, subsection 4. The chief juvenile court officer or the officer's designee may place a child in group foster care for failure to comply with the terms and conditions of the supervised community treatment program for up to seventy-two hours without notice to the court or for more than seventy-two hours if the court is notified of the placement within seventy-two hours of placement, subject to a hearing before the court on the placement within ten days.

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 or in a supervised community treatment program estab-

lished pursuant to section 232.191, subsection 4, as a result of a prior delinquency adjudication.

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, other than a child who has committed a violation of section 123.47, in secure custody for not more than two days in a facility under section 232.22, subsection 3, 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, paragraph "d", "e", or "f", the order shall state that reasonable efforts as defined in section 232.57 have been made. If deemed appropriate by the court, the order may include a determination that continuation of the child in the child's home is contrary to the child's welfare. The inclusion of such a determination shall not under any circumstances be deemed a prerequisite for entering an order pursuant to this section. However, the inclusion of such a determination, supported by the record, may be used to assist the department in obtaining federal funding for the child's placement.

When the court orders the transfer of legal cus-

tody 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 group foster care, the department or agency shall make every reasonable effort to place the child within the state, in the least restrictive, most family-like, and most appropriate 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.

2001 Acts, ch 24, §39; 2001 Acts, ch 135, §7

Highly structured programs; appropriation; criteria for extending eligibility to youth beyond age eighteen; 94 Acts, ch 1172, §69; 95 Acts, ch 205, §10; 96 Acts, ch 1213, §10; 97 Acts, ch 208, §12; 98 Acts, ch 1218, §15; 99 Acts, ch 203, §15; 2000 Acts, ch 1228, §16

Subsection 6, unnumbered paragraph 1 amended

Subsection 7 amended

232.53 Duration of dispositional orders.

1. Any dispositional order entered by the court pursuant to section 232.52 shall remain in force for an indeterminate period or until the child becomes eighteen years of age unless otherwise specified by the court or unless sooner terminated pursuant to the provisions of section 232.54. No dispositional order made under section 232.52, subsection 2, paragraph “e” shall remain in force longer than the maximum possible duration of the sentence which may be imposed on an adult for the commission of the act which the child has been found by the court to have committed.

2. All dispositional orders entered prior to the child attaining the age of seventeen years shall automatically terminate when the child becomes eighteen years of age. Dispositional orders entered subsequent to the child attaining the age of seventeen years and prior to the child’s eighteenth birthday shall automatically terminate one year and six months after the date of disposition. In the case of an adult within the jurisdiction of the court under the provisions of section 232.8, subsection 1, the dispositional order shall automatically terminate one year and six months after the last date upon which jurisdiction could attach.

3. Notwithstanding section 233A.13, a child committed to the training school subsequent to the child attaining the age of seventeen years and prior to the child’s eighteenth birthday may be held at the school beyond the child’s eighteenth birthday pursuant to subsection 2, provided that the training school makes application to and receives permission from the committing court. This extension shall be for the purpose of completion by the child of a course of instruction established for the child pursuant to section 233A.4 and cannot extend for more than one year and six months beyond the date of disposition.

4. *a.* Any person supervising but not having custody of the child pursuant to such an order shall file a written report with the court at least every six months concerning the status and progress of the child.

b. Any agency, facility, institution, or person to whom custody of the child has been transferred pursuant to such order shall file a written report with the court at least every six months concerning the status and progress of the child.

c. Any report prepared pursuant to this subsection shall be included in the record considered

by the court in a permanency hearing conducted pursuant to section 232.58.

2001 Acts, ch 135, §8
Subsection 4 amended

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, paragraphs “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 conditions 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.

7. With respect to a juvenile court dispositional order entered regarding a child who has received a youthful offender deferred sentence under section 907.3A, the dispositional order may be terminated prior to the child reaching the age of eighteen upon motion of the child, the person or agency to whom custody of the child has been transferred, or the county attorney following a hearing before the juvenile court if it is shown by clear and convincing evidence that it is in the best interests of the child and the community to terminate the order. The hearing may be waived if all parties to the proceeding agree. The dispositional order regarding a child who has received a youthful offender deferred sentence may also be terminated prior to the child reaching the age of eighteen upon motion of the county attorney, if the waiver of the child to district court was conditioned upon the terms of an agreement between the county attorney and the child, and the child violates the terms of the agreement after the waiver order has been entered. The district court shall discharge the child’s youthful offender status upon receiving a termination order under this section.

8. With respect to a dispositional order entered regarding a child who has received a youthful offender deferred sentence under section 907.3A, the juvenile court may, in the case of a child who violates the terms of the order, modify or terminate the order in accordance with the following:

a. After notice and hearing at which the facts of the child’s violation of the terms of the order are found, the juvenile court may refuse to modify the order, modify the order and impose a more restrictive order, or, after an assessment of the child by a juvenile court officer in consultation with the judicial district department of correctional services and if the child is age fourteen or over, terminate the order and return the child to the supervision of the district court under chapter 907.

b. The juvenile court shall only terminate an order under this subsection if after considering the best interests of the child and the best interests of the community the court finds that the child should be returned to the supervision of the district court.

c. A youthful offender over whom the juvenile court has terminated the dispositional order under this subsection shall be treated in the manner of an adult who has been arrested for a violation of probation under section 908.11 for sentencing purposes only.

Notice requirements of this section shall be satisfied by providing reasonable notice to the persons required to be provided notice for adjudicatory hearings under 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.

2001 Acts, ch 135, §27

Subsection 8, unnumbered paragraph 2 amended

232.57 Reasonable efforts defined — effect of aggravated circumstances.

1. For the purposes of this division, unless the context otherwise requires, “reasonable efforts” means the efforts made to prevent permanent removal of a child from the child’s home and to encourage reunification of the child with the child’s parents and family. If a court order includes a determination that continuation of the child in the child’s home is not appropriate or not possible, reasonable efforts may include the efforts made in a timely manner to finalize a permanency plan for the child.

2. If the court determines by clear and convincing evidence that aggravated circumstances exist, with written findings of fact based upon evidence in the record, the court may waive the requirement for making reasonable efforts. The existence of aggravated circumstances is indicated by any of the following:

a. The parent has abandoned the child.

b. The court finds the circumstances described in section 232.116, subsection 1, paragraph “i”, are applicable to the child.

c. The parent’s parental rights have been terminated under section 232.116 with respect to another child who is a member of the same family, and there is clear and convincing evidence to show that the offer or receipt of services would not be likely within a reasonable period of time to correct the conditions which led to the child’s removal.

d. The parent has been convicted of the murder of another child of the parent.

e. The parent has been convicted of the voluntary manslaughter of another child of the parent.

f. The parent has been convicted of aiding or abetting, attempting, conspiring in, or soliciting the commission of the murder or voluntary manslaughter of another child of the parent.

g. The parent has been convicted of a felony assault which resulted in serious bodily injury of the child or of another child of the parent.

3. Any order entered under this division may include findings regarding reasonable efforts.

2001 Acts, ch 135, §9

NEW section

232.58 Permanency hearings.

1. If an order entered pursuant to this division for an out-of-home placement of a child includes a determination that continuation of the child in the child’s home is contrary to the child’s welfare, the court shall review the child’s continued placement by holding a permanency hearing or hearings in accordance with this section. The initial permanency hearing shall be the earlier of the following:

a. For an order for which the court has not waived reasonable efforts requirements, the permanency hearing shall be held within twelve months of the date the child was removed from the home.

b. For an order in a case in which aggravated circumstances exist for which the court has waived reasonable efforts requirements, the permanency hearing shall be held within thirty days of the date the requirements were waived.

2. Reasonable notice shall be provided of a permanency hearing for an out-of-home placement in which the court order has included a determination that continuation of the child in the child’s home is contrary to the child’s welfare. 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 case permanency plan or evidence submitted to the court. Upon completion of the hearing, the court shall enter written findings identifying a primary permanency goal for the child. If a case permanency plan is in effect at the time of the hearing, the court shall also make a determination as to whether reasonable progress is being made in achieving the permanency goal and in complying with the other provisions of that case permanency plan.

3. After a permanency hearing, the court shall do one of the following:

a. Enter an order pursuant to section 232.52 to return the child to the child’s home.

b. Enter an order pursuant to section 232.52 to continue the out-of-home 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 based upon the existence of the evidence required by subsection 4, 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) If the department has documented to the court's satisfaction a compelling reason for determining that an order under the other subparagraphs of this paragraph "*d*" would not be in the child's best interest, order another planned permanent living arrangement for the child.

4. Prior to entering a permanency order pursuant to subsection 3, paragraph "*d*", clear and 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.

5. 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.

6. 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.

7. Following an initial permanency hearing and 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 the order places the child in the custody of the department for the purpose of a planned permanent living arrangement, the review shall be in a hearing that shall not be waived or continued beyond twelve months after the initial permanency hearing or the last permanency 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.

2001 Acts, ch 135, §10
NEW section

232.59 and 232.60 Reserved.

232.68 Definitions.

The definitions in section 235A.13 are applicable to this part 2 of division III. 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.

g. The person responsible for the care of a child has, in the presence of the child, as defined in section 232.2, subsection 6, paragraph "*p*", manufactured a dangerous substance, as defined in section

232.2, subsection 6, paragraph “p”, or in the presence of the child possesses a product containing ephedrine, its salts, optical isomers, salts of optical isomers, or pseudoephedrine, its salts, optical isomers, salts of optical isomers, with the intent to use the product as a precursor or an intermediary to a dangerous substance.

h. The commission of bestiality in the presence of a minor under section 717C.1 by a person who resides in a home with a child, as a result of the acts or omissions of a person responsible for the care of the child.

2A. “*Child protection worker*” means an individual designated by the department to perform an assessment in response to a report of child abuse.

3. “*Confidential access to a child*” means access to a child, during an assessment 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 and this part:

a. “*Interview*” means the verbal exchange between the child protection worker and the child for the purpose of developing information necessary to protect the child. A child protection worker 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 child protection worker 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 aged four or older by the child protection worker 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 child protection worker 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 child protection worker. However, if prior consent of the child’s parent or guardian, or an ex parte court order, is obtained, “*observation*” may include viewing the child’s unclothed body other than the genitalia and pubes.

c. “*Physical 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.

2001 Acts, ch 46, §2; 2001 Acts, ch 131, §1
Subsection 2, NEW paragraphs g and h

232.69 Mandatory and permissive reporters — training required.

1. The classes of persons enumerated in this subsection shall make a report within twenty-four hours and as provided in section 232.70, of cases of child abuse. In addition, the classes of persons enumerated in this subsection shall make a report of abuse of a child who is under twelve years of age and may make a report of abuse of a child who is twelve years of age or older, which would be defined as child abuse under section 232.68, subsection 2, paragraph “c” or “e”, except that the abuse resulted from the acts or omissions of a person other than a person responsible for the care of the child.

a. Every health practitioner who in the scope of professional practice, examines, attends, or treats a child and who reasonably believes the child has been abused. Notwithstanding section 139A.30, this provision applies to a health practitioner who receives information confirming that a child is infected with a sexually transmitted disease.

b. Any of the following persons who, in the scope of professional practice or in their employment responsibilities, examines, attends, counsels, or treats a child and reasonably believes a child has suffered abuse:

- (1) A social worker.
- (2) An employee or operator of a public or private health care facility as defined in section 135C.1.
- (3) A certified psychologist.
- (4) A licensed school employee, certified para-educator, or holder of a coaching authorization issued under section 272.31.
- (5) An employee or operator of a licensed child care center, registered child care home, head start program, family development and self-sufficiency grant program under section 217.12, or healthy opportunities for parents to experience success – healthy families Iowa program under section 135.106.
- (6) An employee or operator of a substance abuse program or facility licensed under chapter 125.
- (7) An employee of a department of human services institution listed in section 218.1.
- (8) An employee or operator of a juvenile detention or juvenile shelter care facility approved under section 232.142.
- (9) An employee or operator of a foster care facility licensed or approved under chapter 237.
- (10) An employee or operator of a mental health center.
- (11) A peace officer.
- (12) A counselor or mental health professional.

2. Any other person who believes that a child has been abused may make a report as provided in section 232.70.

3. a. For the purposes of this subsection, “licensing board” means an examining board designated in section 147.13, the board of educational examiners created in section 272.2, or a licensing board as defined in section 272C.1.

b. A person required to make a report under subsection 1, other than a physician whose professional practice does not regularly involve providing primary health care to children, shall complete two hours of training relating to the identification and reporting of child abuse within six months of initial employment or self-employment involving the examination, attending, counseling, or treatment of children on a regular basis. Within one month of initial employment or self-employment, the person shall obtain a statement of the abuse reporting requirements from the person’s employer or, if self-employed, from the department. The person shall complete at least two hours of additional child abuse identification and reporting training every five years.

c. If the person is an employee of a hospital or similar institution, or of a public or private institution, agency, or facility, the employer shall be re-

sponsible for providing the child abuse identification and reporting training. If the person is self-employed, employed in a licensed or certified profession, or employed by a facility or program that is subject to licensure, regulation, or approval by a state agency, the person shall obtain the child abuse identification and reporting training as provided in paragraph “d”.

d. The person may complete the initial or additional training requirements as part of any of the following that are applicable to the person:

(1) A continuing education program required under chapter 272C and approved by the appropriate licensing or examining board.

(2) A training program using a curriculum approved by the abuse education review panel established by the director of public health pursuant to section 135.11.

(3) A training program using such an approved curriculum offered by the department of human services, the department of education, an area education agency, a school district, the Iowa law enforcement academy, or a similar public agency.

e. A licensing board with authority over the licensure of a person required to make a report under subsection 1 shall require as a condition of licensure that the person is in compliance with the requirements for abuse training under this subsection. The licensing board shall require the person upon licensure renewal to accurately document for the licensing board the person’s completion of the training requirements. However, the licensing board may adopt rules providing for waiver or suspension of the compliance requirements, if the waiver or suspension is in the public interest, applicable to a person who is engaged in active duty in the military service of this state or of the United States, to a person for whom compliance with the training requirements would impose a significant hardship, or to a person who is practicing a licensed profession outside this state or is otherwise subject to circumstances that would preclude the person from encountering child abuse in this state.

f. For persons required to make a report under subsection 1 who are not engaged in a licensed profession that is subject to the authority of a licensing board but are employed by a facility or program subject to licensure, registration, or approval by a state agency, the agency shall require as a condition of renewal of the facility’s or program’s licensure, registration, or approval, that such persons employed by the facility or program are in compliance with the training requirements of this subsection.

g. For peace officers, the elected or appointed official designated as the head of the agency employing the peace officer shall ensure compliance with the training requirements of this subsection.

h. For persons required to make a report under subsection 1 who are employees of state de-

partments and political subdivisions of the state, the department director or the chief administrator of the political subdivision shall ensure the persons' compliance with the training requirements of this subsection.

2001 Acts, ch 122, §2, 3
Subsection 1, paragraph b amended
Subsection 3 amended

232.70 Reporting procedure.

1. Each report made by a mandatory reporter, as defined in section 232.69, subsection 1, shall be made both orally and in writing. Each report made by a permissive reporter, as defined in section 232.69, subsection 2, may be oral, written, or both.

2. The employer or supervisor of a person who is a mandatory or permissive reporter shall not apply a policy, work rule, or other requirement that interferes with the person making a report of child abuse.

3. The oral report shall be made by telephone or otherwise to the department of human services. If the person making the report has reason to believe that immediate protection for the child is advisable, that person shall also make an oral report to an appropriate law enforcement agency.

4. The written report shall be made to the department of human services within forty-eight hours after such oral report.

5. Upon receipt of a report the department shall do all of the following:

a. Immediately, upon receipt of an oral report, make a determination as to whether the report constitutes an allegation of child abuse as defined in section 232.68.

b. Notify the appropriate county attorney of the receipt of the report.

6. The oral and written reports shall contain the following information, or as much thereof as the person making the report is able to furnish:

a. The names and home address of the child and the child's parents or other persons believed to be responsible for the child's care;

b. The child's present whereabouts if not the same as the parent's or other person's home address;

c. The child's age;

d. The nature and extent of the child's injuries, including any evidence of previous injuries;

e. The name, age and condition of other children in the same home;

f. Any other information which the person making the report believes might be helpful in establishing the cause of the injury to the child, the identity of the person or persons responsible for the injury, or in providing assistance to the child; and

g. The name and address of the person making the report.

7. A report made by a permissive reporter, as defined in section 232.69, subsection 2, shall be re-

garded as a report pursuant to this chapter whether or not the report contains all of the information required by this section and may be made to the department of human services, county attorney, or law enforcement agency. If the report is made to any agency other than the department of human services, such agency shall promptly refer the report to the department of human services.

8. If a report would be determined to constitute an allegation of child abuse as defined under section 232.68, subsection 2, paragraph "c" or "e", except that the suspected abuse resulted from the acts or omissions of a person other than a person responsible for the care of the child, the department shall refer the report to the appropriate law enforcement agency having jurisdiction to investigate the allegation. The department shall refer the report orally as soon as practicable and in writing within seventy-two hours of receiving the report.

9. Within twenty-four hours of receiving a report from a mandatory or permissive reporter, the department shall inform the reporter, orally or by other appropriate means, whether or not the department has commenced an assessment of the allegation in the report.

2001 Acts, ch 122, §4
NEW subsection 2 and former subsections 2 – 8 renumbered as 3 – 9

232.71B Duties of the department upon receipt of report.

1. *Commencement of assessment — purpose.*

a. If the department determines a report constitutes a child abuse allegation, the department shall promptly commence an appropriate assessment within twenty-four hours of receiving the report.

b. The primary purpose of the assessment shall be the protection 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.

2. *Notification of parents.* The department, within five working days of commencing the assessment, shall provide written notification of the assessment 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 to a subject of a child abuse report listed in section 235A.15, subsection 2, paragraph "a".

3. *Involvement of law enforcement.* The department shall apply a protocol, developed with representatives of law enforcement agencies at the local level, to work jointly with law enforcement agencies in performing assessment and in-

vestigative processes for child abuse reports in which a criminal act harming a child is alleged. 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. 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.

4. *Assessment process.* The assessment is subject to all of the following:

a. Identification of the nature, extent, and cause of the injuries, if any, to the child named in the report.

b. Identification of the person or persons responsible for the alleged child abuse.

c. A description of 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 concerns regarding protection of children are identified by the child protection worker, the child protection worker 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.

f. Unless otherwise prohibited under section 234.40 or 280.21, the use of corporal punishment by the person responsible for the care of a child which does not result in a physical injury to the child shall not be considered child abuse.

5. *Home visit.* The assessment 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 assessment to enter the home and interview or observe the child.

6. *Facility or school visit.* The assessment 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 child protection worker by providing confidential access to the child named in the report for the purpose of interviewing the child, and shall allow the child protection worker confidential access

to other children for the purpose of conducting interviews in order to obtain relevant information. The child protection worker 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 aged ten years of age or older can terminate contact with the child protection worker 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 administrators and their facilities or school districts for cooperating in an assessment and allowing confidential access to a child.

7. *Information requests.*

a. The department 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 assessment upon the request of the department.

b. In performing an assessment, 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 is necessary.

8. *Physical examination.* If the department refers a child to a physician for a physical examination, the department shall contact the physician regarding 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.

9. *Multidisciplinary team.* 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 8. Upon the department's request, a multidisciplinary team shall assist the department in the assessment, diagnosis, and disposition of a child abuse report.

10. *Facility protocol.* The department shall apply a protocol, developed in consultation with facilities providing care to children, for conducting an assessment of reports of abuse of children allegedly caused by employees of facilities providing care to children. As part of such an assessment, 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 assessment.

b. An instance in which facility policy or lack of facility policy may have contributed to the reported incident of 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 receiving care.

11. *Assessment report.* The department, upon completion of the assessment, shall make a written report of the assessment, in accordance with all of the following:

a. The written assessment shall incorporate the information required by subsection 4.

b. The written assessment shall be completed within twenty business days of the receipt of the report.

c. The written 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.

d. The written assessment shall identify the strengths and needs of the child, and of the child's parent, home, and family.

e. The written assessment shall identify services available from the department and informal and formal services and other support available in the community to address the strengths and needs identified in the assessment.

f. 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.

g. The department shall notify each subject of the child abuse report, as identified in section 235A.15, subsection 2, paragraph "a", of the results of the assessment, of the subject's right, pursuant to section 235A.19, to correct the report data or disposition data which refers to the subject, and of the procedures to correct the data.

12. *Court-ordered and voluntary services.* The department shall provide 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.

13. *County attorney — juvenile court.* The department shall provide the juvenile court and the county attorney with a copy of the portion of the written assessment pertaining to the child abuse report. The juvenile court and the county attorney shall notify the department of any action taken concerning an assessment provided by the department.

14. *False reports.* If a fourth report is received from the same person who made three earlier reports which identified the same child as a victim of child abuse and the same person responsible

for the care of the child as the alleged abuser and which were determined by the department to be entirely false or without merit, the department may determine that the report is again false or without merit due to the report's spurious or frivolous nature and may in its discretion terminate its assessment of the report. If the department receives more than three reports which identify the same child as a victim of child abuse or the same person as the alleged abuser of a child, or which were made by the same person, and the department determined the reports to be entirely false or without merit, the department shall provide information concerning the reports to the county attorney for consideration of criminal charges under section 232.75, subsection 3.

2001 Acts, ch 122, §5
Subsection 14 amended

232.73 Medically relevant tests — immunity from liability.

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 assessment of a child abuse report pursuant to section 232.71B, 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 in sections 232.77 and 232.78, "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 of the illegal drugs, including a drug urine screen test.

2001 Acts, ch 135, §11
Unnumbered paragraph 2 amended

232.75 Sanctions.

1. Any person, official, agency, or institution required by this chapter to report a suspected case of child abuse who knowingly and willfully fails to do so is guilty of a simple misdemeanor.

2. Any person, official, agency, or institution required by section 232.69 to report a suspected case of child abuse who knowingly fails to do so or who knowingly interferes with the making of such a report in violation of section 232.70 is civilly liable for the damages proximately caused by such failure or interference.

3. A person who reports or causes to be reported to the department of human services false information regarding an alleged act of child abuse, knowing that the information is false or that the act did not occur, commits a simple misdemeanor.

2001 Acts, ch 122, §6
Subsection 2 amended

232.78 Temporary custody of a child pursuant to ex parte court order.

1. The juvenile court may enter an ex parte order directing a peace officer or a juvenile court officer to take custody of a child before or after the filing of a petition under this chapter provided all of the following apply:

a. The person responsible for the care of the child is absent, or though present, was asked and refused to consent to the removal of the child and was informed of an intent to apply for an order under this section, or there is reasonable cause to believe that a request for consent would further endanger the child, or there is reasonable cause to believe that a request for consent will cause the parent, guardian, or legal custodian to take flight with the child.

b. It appears that the child's immediate removal is necessary to avoid imminent danger to the child's life or health. The circumstances or conditions indicating the presence of such imminent danger shall include but are not limited to any of the following:

(1) The refusal or failure of the person responsible for the care of the child to comply with the request of a peace officer, juvenile court officer, or child protection worker for such person to obtain and provide to the requester the results of a physical or mental examination of the child. The request for a physical examination of the child may specify the performance of a medically relevant test.

(2) The refusal or failure of the person responsible for the care of the child or a person present in the person's home to comply with a request of a peace officer, juvenile court officer, or child protection worker for such a person to submit to and provide to the requester the results of a medically relevant test of the person.

c. There is not enough time to file a petition and hold a hearing under section 232.95.

d. The application for the order includes a statement of the facts to support the findings specified in paragraphs "a", "b", and "c".

2. The person making the application for an order shall assert facts showing there is reasonable cause to believe that the child cannot either be returned to the place where the child was residing or placed with the parent who does not have physical care of the child.

3. Except for good cause shown or unless the child is sooner returned to the place where the child was residing or permitted to return to the child care facility, a petition shall be filed under this chapter within three days of the issuance of the order.

4. The juvenile court may enter an order authorizing a physician or hospital to provide emergency medical or surgical procedures before the filing of a petition under this chapter provided:

a. Such procedures are necessary to safeguard the life and health of the child; and

b. There is not enough time to file a petition under this chapter and hold a hearing as provided in section 232.95.

5. The juvenile court, before or after the filing of a petition under this chapter, may enter an ex parte order authorizing a physician or hospital to conduct an outpatient physical examination or authorizing a physician, a psychologist certified under section 154B.7, or a community mental health center accredited pursuant to chapter 230A to conduct an outpatient mental examination of a child if necessary to identify the nature, extent, and cause of injuries to the child as required by section 232.71B, provided all of the following apply:

a. The parent, guardian, or legal custodian is absent, or though present, was asked and refused to provide written consent to the examination.

b. The juvenile court has entered an ex parte order directing the removal of the child from the child's home or a child care facility under this section.

c. There is not enough time to file a petition and to hold a hearing as provided in section 232.98.

6. Any person who may file a petition under this chapter may apply for, or the court on its own motion may issue, an order for temporary removal under this section. An appropriate person designated by the court shall confer with a person seeking the removal order, shall make every reasonable effort to inform the parent or other person legally responsible for the child's care of the application, and shall make such inquiries as will aid the court in disposing of such application. The person designated by the court shall file with the court a complete written report providing all details of the designee's conference with the person seeking the removal order, the designee's efforts to inform the parents or other person legally responsible for the child's care of the application, any inquiries made by the designee to aid the court in disposing of the application, and all information the designee communicated to the court. The report shall be filed within five days of the date of the removal order. If the court does not designate an appropriate person who performs the required duties, notwithstanding section 234.39 or any other provision of law, the child's parent shall not be responsible for paying the cost of care and services for the duration of the removal order.

7. Any order entered under this section authorizing temporary removal of a child must include both of the following:

a. A determination made by the court that continuation of the child in the child's home would be contrary to the welfare of the child. Such a determination must be made on a case-by-case basis. The grounds for the court's determination must be

explicitly documented and stated in the order. However, preserving the safety of the child must be the court's paramount consideration. If imminent danger to the child's life or health exists at the time of the court's consideration, the determination shall not be a prerequisite to the removal of the child.

b. A statement informing the child's parent that the consequences of a permanent removal may include termination of the parent's rights with respect to the child.

2001 Acts, ch 135, §12, 13
Subsection 1, paragraph b amended
Subsection 7 amended

232.79 Custody without court order.

1. A peace officer or juvenile court officer may take a child into custody, a physician treating a child may keep the child in custody, or a juvenile court officer may authorize a peace officer, physician, or medical security personnel to take a child into custody, without a court order as required under section 232.78 and without the consent of a parent, guardian, or custodian provided that both of the following apply:

a. The child is in a circumstance or condition that presents an imminent danger to the child's life or health.

b. There is not enough time to apply for an order under section 232.78.

2. If a person authorized by this section removes or retains custody of a child, the person shall:

a. Bring the child immediately to a place designated by the rules of the court for this purpose, unless the person is a physician treating the child and the child is or will presently be admitted to a hospital.

b. Make every reasonable effort to inform the parent, guardian, or custodian of the whereabouts of the child.

c. In accordance with court-established procedures, immediately orally inform the court of the emergency removal and the circumstances surrounding the removal.

d. Within twenty-four hours of orally informing the court of the emergency removal in accordance with paragraph "c", inform the court in writing of the emergency removal and the circumstances surrounding the removal.

3. Any person, agency, or institution acting in good faith in the removal or keeping of a child pursuant to this section, and any employer of or person under the direction of such a person, agency, or institution, shall have immunity from any civil or criminal liability that might otherwise be incurred or imposed as the result of such removal or keeping.

4. *a.* When the court is informed that there has been an emergency removal or keeping of a child without a court order, the court shall direct the department of human services or the juvenile

probation department to make every reasonable effort to communicate immediately with the child's parent or parents or other person legally responsible for the child's care. Upon locating the child's parent or parents or other person legally responsible for the child's care, the department of human services or the juvenile probation department shall, in accordance with court-established procedures, immediately orally inform the court. After orally informing the court, the department of human services or the juvenile probation department shall provide to the court written documentation of the oral information.

b. The court shall authorize the department of human services or the juvenile probation department to cause a child thus removed or kept to be returned if it concludes there is not an imminent risk to the child's life and health in so doing. If the department of human services or the juvenile probation department receives information which could affect the court's decision regarding the child's return, the department of human services or the juvenile probation department, in accordance with court established procedures, shall immediately orally provide the information to the court. After orally providing the information to the court, the department of human services or the juvenile probation department shall provide to the court written documentation of the oral information. If the child is not returned, the department of human services or the juvenile probation department shall forthwith cause a petition to be filed within three days after the removal.

c. If deemed appropriate by the court, upon being informed that there has been an emergency removal or keeping of a child without a court order, the court may enter an order in accordance with section 232.78.

5. When there has been an emergency removal or keeping of a child without a court order, a physical examination of the child by a licensed medical practitioner shall be performed within twenty-four hours of such removal, unless the child is returned to the child's home within twenty-four hours of the removal.

2001 Acts, ch 135, §14
Subsection 4, NEW paragraph c

232.88 Summons, notice, subpoenas, and service.

After a petition has been filed, the court shall issue and serve summons, subpoenas, and other process in the same manner as for adjudicatory hearings in cases of juvenile delinquency as provided in section 232.37. Reasonable notice shall be provided to the persons required to be provided notice under section 232.37, except that notice shall be waived regarding a person who was notified of the adjudicatory hearing and who failed to appear. In addition, reasonable notice for any hearing under this division shall be provided to the agency, facility, institution, or person, including a foster par-

ent, relative, or other individual providing preadoptive care, with whom a child has been placed.

2001 Acts, ch 135, §28
Section amended

232.95 Hearing concerning temporary removal.

1. At any time after the petition is filed, any person who may file a petition under section 232.87 may apply for, or the court on its own motion may order, a hearing to determine whether the child should be temporarily removed from home. If the child is in the custody of a person other than the child's parent, guardian, or custodian as the result of action taken pursuant to section 232.78 or 232.79, the court shall hold a hearing within ten days of the date of temporary removal to determine whether the temporary removal should be continued.

2. Upon such hearing, the court may:

a. Remove the child from home and place the child in a shelter care facility or in the custody of a suitable person or agency pending a final order of disposition if the court finds that substantial evidence exists to believe that removal is necessary to avoid imminent risk to the child's life or health.

(1) If removal is ordered, the court must, in addition, make a determination that continuation of the child in the child's home would be contrary to the welfare of the child, and that reasonable efforts, as defined in section 232.102, have been made to prevent or eliminate the need for removal of the child from the child's home.

(2) The court's determination regarding continuation of the child in the child's home, and regarding reasonable efforts, including those made to prevent removal and those made to finalize any permanency plan in effect, as well as any determination by the court that reasonable efforts are not required, must be made on a case-by-case basis. The grounds for each determination must be explicitly documented and stated in the court order. However, preserving the safety of the child must be the court's paramount consideration. If imminent danger to the child's life or health exists at the time of the court's consideration, the determinations otherwise required under this paragraph shall not be a prerequisite for an order for removal of the child.

(3) The order shall also include a statement informing the child's parent that the consequences of a permanent removal may include termination of the parent's rights with respect to the child.

3. The court shall make and file written findings as to the grounds for granting or denying an application under this section.

4. If the court orders the child removed from the home pursuant to subsection 2, paragraph "a", the court shall hold a hearing to review the removal order within six months unless a dispositional

hearing pursuant to section 232.99 has been held.

2001 Acts, ch 135, §15
Subsection 2, paragraph a amended

232.96 Adjudicatory hearing.

1. The court shall hear and adjudicate cases involving a petition alleging a child to be a child in need of assistance.

2. The state shall have the burden of proving the allegations by clear and convincing evidence.

3. Only evidence which is admissible under the rules of evidence applicable to the trial of civil cases shall be admitted, except as otherwise provided by this section.

4. A report made to the department of human services pursuant to chapter 235A shall be admissible in evidence, but such a report shall not alone be sufficient to support a finding that the child is a child in need of assistance unless the attorneys for the child and the parents consent to such a finding.

5. Neither the privilege attaching to confidential communications between a health practitioner or mental health professional and patient nor the prohibition upon admissibility of communications between husband and wife shall be ground for excluding evidence at an adjudicatory hearing.

6. A report, study, record, or other writing or an audiotape or videotape recording made by the department of human services, a juvenile court officer, a peace officer or a hospital relating to a child in a proceeding under this division is admissible notwithstanding any objection to hearsay statements contained in it provided it is relevant and material and provided its probative value substantially outweighs the danger of unfair prejudice to the child's parent, guardian, or custodian. The circumstances of the making of the report, study, record or other writing or an audiotape or videotape recording, including the maker's lack of personal knowledge, may be proved to affect its weight.

7. After the hearing is concluded, the court shall make and file written findings as to the truth of allegations of the petition and as to whether the child is a child in need of assistance.

8. If the court concludes facts sufficient to sustain a petition have not been established by clear and convincing evidence or if the court concludes that its aid is not required in the circumstances, the court shall dismiss the petition.

9. If the court concludes that facts sufficient to sustain the petition have been established by clear and convincing evidence and that its aid is required, the court may enter an order adjudicating the child to be a child in need of assistance.

10. If the court enters an order adjudicating the child to be a child in need of assistance, the court, if it has not previously done so, may issue an order authorizing temporary removal of the child from the child's home as set forth in section 232.95, subsection 2, paragraph "a", pending a final order

of disposition. The order shall include both of the following:

a. A determination that continuation of the child in the child's home would be contrary to the welfare of the child, and that reasonable efforts, as defined in section 232.102, have been made to prevent or eliminate the need for removal of the child from the child's home. The court's determination regarding continuation of the child in the child's home, and regarding reasonable efforts, including those made to prevent removal and those made to finalize any permanency plan in effect, as well as any determination by the court that reasonable efforts are not required, must be made on a case-by-case basis. The grounds for each determination must be explicitly documented and stated in the court order. However, preserving the safety of the child is the paramount consideration. If imminent danger to the child's life or health exists at the time of the court's consideration, the determinations otherwise required under this paragraph shall not be a prerequisite for an order for temporary removal of the child.

b. A statement informing the child's parent that the consequences of a permanent removal may include termination of the parent's rights with respect to the child.

2001 Acts, ch 135, §16

Subsection 10, paragraph a 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 parent who does not have physical care of the child, other 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. *a.* 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:

(1) The child cannot be protected from physical abuse without transfer of custody; or

(2) 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.

b. In order to transfer custody of the child under this subsection, the court must make a determination that continuation of the child in the child's home would be contrary to the welfare of the child, and shall identify the reasonable efforts that have been made. The court's determination regarding continuation of the child in the child's home, and regarding reasonable efforts, including those made to prevent removal and those made to finalize any permanency plan in effect, as well as any determination by the court that reasonable efforts are not required, must be made on a case-by-case basis. The grounds for each determination must be explicitly documented and stated in the court order. However, preserving the safety of the child is the paramount consideration. If imminent danger to the child's life or health exists at the

time of the court's consideration, the determinations otherwise required under this paragraph shall not be a prerequisite for an order for removal of the child.

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 interests 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 parent who does not have physical care of the child, other 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 group foster care, the department or agency shall make every reasonable effort to place the child within Iowa, in the least restrictive, most family-like, and most appropriate 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. Any order transferring custody to the department or an agency shall include a statement informing the child's parent that the consequences of a permanent removal may include the termination of the parent's rights with respect to the child.

9. 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 satisfies the requirements for initial dispositional review or subsequent permanency hearing.

10. a. As used in this division, "*reasonable efforts*" means the efforts made to preserve and unify a family prior to the out-of-home placement of a child in foster care or to eliminate the need for removal of the child or make it possible for the child to safely return to the family's home. If returning the child to the family's home is not appropriate or not possible, reasonable efforts shall include the efforts made in a timely manner to finalize a permanency plan for the child. A child's health and safety shall be the paramount concern in making reasonable efforts. 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 caseloads 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.

11. The performance of reasonable efforts to place a child for adoption or with a guardian may be made concurrently with making reasonable efforts as defined in this section.

12. If the court determines by clear and convincing evidence that aggravated circumstances exist, with written findings of fact based upon evidence in the record, the court may waive the requirement for making reasonable efforts. The existence of aggravated circumstances is indicated by any of the following:

- a. The parent has abandoned the child.
- b. The court finds the circumstances described in section 232.116, subsection 1, paragraph “i”, are applicable to the child.
- c. The parent’s parental rights have been terminated under section 232.116 with respect to another child who is a member of the same family, and there is clear and convincing evidence to show that the offer or receipt of services would not be likely within a reasonable period of time to correct the conditions which led to the child’s removal.
- d. The parent has been convicted of the murder of another child of the parent.
- e. The parent has been convicted of the voluntary manslaughter of another child of the parent.
- f. The parent has been convicted of aiding or abetting, attempting, conspiring in, or soliciting the commission of the murder or voluntary manslaughter of another child of the parent.
- g. The parent has been convicted of a felony assault which resulted in serious bodily injury of the child or of another child of the parent.

2001 Acts, ch 24, §40; 2001 Acts, ch 135, §17 – 19
 Subsection 5, unnumbered paragraph 1 redesignated as paragraph a and former paragraphs a and b redesignated as subparagraphs (1) and (2)
 Subsection 5, unnumbered paragraph 2 amended and redesignated as paragraph b
 Subsection 7 amended
 Subsection 10, paragraph a, unnumbered paragraph 1 amended
 Subsection 12, unnumbered paragraph 1 amended

232.103 Termination, modification, vacation and substitution of dispositional order.

1. At any time prior to expiration of a dispositional order and upon the motion of an authorized

party or upon its own motion as provided in this section, the court may terminate the order and discharge the child, modify the order, or vacate the order and make a new order.

2. The following persons shall be authorized to file a motion to terminate, modify or vacate and substitute a dispositional order:

- a. The child.
- b. The child’s parent, guardian or custodian, except that such motion may be filed by that person not more often than once every six months except with leave of court for good cause shown.
- c. The child’s guardian ad litem.
- d. A person supervising the child pursuant to a dispositional order.
- e. An agency, facility, institution or person to whom legal custody has been transferred pursuant to a dispositional order.
- f. The county attorney.

3. A hearing shall be held on a motion to terminate or modify a dispositional order except that a hearing on a motion to terminate an order may be waived upon agreement by all parties. Reasonable notice of the hearing shall be given to the parties. The hearing shall be conducted in accordance with the provisions of section 232.50.

4. The court may terminate an order and release the child if the court finds that the purposes of the order have been accomplished and the child is no longer in need of supervision, care or treatment.

5. The court may modify or vacate an order for good cause shown provided that where the request to modify or vacate is based on the child’s alleged failure to comply with the conditions or terms of the order, the court may modify or vacate the order only if it finds that there is clear and convincing evidence that the child violated a material and reasonable condition or term of the order.

6. If the court vacates the order it may make any other order in accordance with and subject to the provisions of sections 232.100 to 232.102.

7. With respect to a temporary transfer order made pursuant to section 232.102, subsection 4, if the court finds that removal of a child from the Iowa juvenile home 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 new dispositional order to place the child in a facility which has been designated to be an alternative placement site for the juvenile home.

2001 Acts, ch 135, §20
 Subsection 3 amended

232.104 Permanency hearing.

1. a. The time for the initial permanency hearing for a child subject to out-of-home placement shall be the earlier of the following:

(1) For a temporary removal order entered under section 232.78, 232.95, or 232.96, for a child who was removed without a court order under sec-

tion 232.79, or for an order entered under section 232.102, for which the court has not waived reasonable efforts requirements, the permanency hearing shall be held within twelve months of the date the child was removed from the home.

(2) For an order entered under section 232.102, for which the court has waived reasonable efforts requirements under section 232.102, subsection 12, the permanency hearing shall be held within thirty days of the date the requirements were waived.

b. The permanency hearing may be held concurrently with a hearing under section 232.103 to review, modify, substitute, vacate, or terminate a dispositional order.

c. Reasonable notice of a permanency hearing shall be provided to the parties. 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 identifying a primary permanency goal for the child. If a permanency plan is in effect at the time of the hearing, the court shall also make a determination as to whether reasonable progress is being made in achieving the permanency goal and complying with the other provisions of that permanency plan.

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) If the department has documented to the court's satisfaction a compelling reason for determining that an order under the other subparagraphs of this paragraph would not be in the

child's best interest, order another planned permanent living arrangement for the child.

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 an initial permanency hearing and 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 the 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 initial permanency hearing or the last permanency 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.

2001 Acts, ch 135, §21, 22
 Subsection 1, paragraph c amended
 Subsection 2, paragraph d, subparagraph (4) amended

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. a. Unless any of the circumstances described in paragraph "b" exist, the county attorney shall file a petition for termination of the parent-child relationship and parental rights with respect to a child or if a petition has been filed, join in the petition, under any of the following circumstances:

(1) The child has been placed in foster care for

fifteen months of the most recent twenty-two-month period. The petition shall be filed by the end of the child's fifteenth month of foster care placement.

(2) A court has determined aggravated circumstances exist and has waived the requirement for making reasonable efforts under section 232.102 because the court has found the circumstances described in section 232.116, subsection 1, paragraph "i", are applicable to the child.

(3) The child is less than twelve months of age and has been judicially determined to meet the definition of abandonment of a child or the child is a newborn infant whose parent has voluntarily released custody of the child in accordance with chapter 233.

(4) The parent has been convicted of the murder or the voluntary manslaughter of another child of the parent.

(5) The parent has been convicted of aiding or abetting, attempting, conspiring in, or soliciting the commission of the murder or voluntary manslaughter of another child of the parent.

(6) The parent has been convicted of a felony assault which resulted in serious bodily injury of the child or of another child of the parent.

b. If any of the following conditions exist, the county attorney is not required to file a petition or join in an existing petition as provided in paragraph "a":

(1) At the option of the department or by order of the court, the child is being cared for by a relative.

(2) The department or a state agency has documented in the child's case permanency plan provided or available to the court a compelling reason for determining that filing the petition would not be in the best interest of the child. A compelling reason shall include but is not limited to documentation in the child's case permanency plan indicating it is reasonably likely the completion of the services being received in accordance with the permanency plan will eliminate the need for removal of the child or make it possible for the child to safely return to the family's home within six months.

(3) The department has not provided the child's family, consistent with the time frames outlined in the child's case permanency plan, with those services the state deems necessary for the safe return of the child to the child's home, and the limited extension of time necessary to complete the services is clearly documented in the case permanency plan.

3. 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.

4. 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. A complete list of the services which have been offered to preserve the family and a statement specifying the services provided to address the reasons stated in any order for removal or in any dispositional or permanency order which did not return the child to the child's home.

f. The signature and verification of the petitioner.

2001 Acts, ch 67, §8, 13; 2001 Acts, ch 135, §25
Subsection 2, paragraph a, subparagraphs (1) and (3) 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 there is clear and convincing evidence that the child is a newborn infant whose parent has voluntarily released custody of the child in accordance with chapter 233.

d. 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.

e. The court finds that all of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

(2) The 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.

f. 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.

g. 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.

h. 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.

i. 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.

j. 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.

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 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.

l. 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.

m. 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 sexu-

ally 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.

n. 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 child's safety, to the best placement for furthering the long-term nurturing and growth of the child, and to the physical, mental, and emotional condition and needs of the child. This 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 should 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.

2001 Acts, ch 67, §9, 13

Subsection 1, NEW paragraph c and former paragraphs c - m redesignated as d - n

232.117 Termination — findings — disposition.

1. After the hearing is concluded the court shall make and file written findings.

2. If the court concludes that facts sufficient to terminate parental rights have not been established by clear and convincing evidence, the court shall dismiss the petition.

3. If the court concludes that facts sufficient to sustain the petition have been established by clear and convincing evidence, the court may order parental rights terminated. If the court terminates the parental rights of the child's parents, the court shall transfer the guardianship and custody of the child to one of the following:

a. The department of human services.

b. A child placing agency or other suitable private agency, facility or institution which is licensed or otherwise authorized by law to receive and provide care for the child.

c. A parent who does not have physical care of the child, other relative, or other suitable person.

4. 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.

5. If after a hearing the court does not order the termination of parental rights but finds that there is clear and convincing evidence that the child is a child in need of assistance, under section 232.2, subsection 6, due to the acts or omissions of one or both of the child's parents the court may adjudicate the child to be a child in need of assistance and may enter an order in accordance with the provisions of section 232.100, 232.101, 232.102, or 232.104.

6. If the court orders the termination of parental rights and transfers guardianship and custody under subsection 3, the guardian shall submit a case permanency plan to the court and shall make every effort to establish a stable placement for the child by adoption or other permanent placement. Within forty-five days of receipt of the termination

order, and every forty-five days thereafter until the court determines such reports are no longer necessary, the guardian shall report to the court regarding efforts made to place the child for adoption or providing the rationale as to why adoption would not be in the child's best interest.

7. The guardian of each child whose guardianship and custody has been transferred under subsection 3 and who has not been placed for adoption shall file a written report with the court every six months concerning the child's placement. The court shall hold a hearing to review the placement at intervals not to exceed six months after the date of the termination of parental rights or the last placement review hearing.

8. The guardian of each child whose guardianship and custody has been transferred under subsection 3 and who has been placed for adoption and whose adoption has not been finalized shall file a written report with the court every six months concerning the child's placement. The court shall hold a hearing to review the placement at intervals not to exceed twelve months after the date of the adoptive placement or the last placement review hearing.

9. Hearings held under this division are open to the public unless the court, on the motion of any of the parties or upon the court's own motion, excludes the public. The court shall exclude the public from a hearing if the court determines that the possibility of damage or harm to the child outweighs the public's interest in having a public hearing. Upon closing the hearing, the court may admit persons who have a direct interest in the case or in the work of the court.

10. If a termination of parental rights order is issued on the grounds that the child is a newborn infant whose parent has voluntarily released custody of the child under section 232.116, subsection 1, paragraph "c", the court shall retain jurisdiction to change a guardian or custodian and to allow a parent whose rights have been terminated to request vacation or appeal of the termination order which request must be made within thirty days of issuance of the granting of the termination order. The period for request for vacation or appeal by a parent whose rights have been terminated shall not be waived or extended and a vacation or appeal shall not be granted for a request made after the expiration of this period. The court shall grant the vacation request only if it is in the best interest of the child. The supreme court shall prescribe rules to establish the period of thirty days, which shall not be waived or extended, in which a parent whose parental rights have been terminated may request a vacation or appeal of such a termination order.

2001 Acts, ch 67, §10, 13
Former subsections 3A - 8 renumbered as 4 - 9
NEW subsection 10

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 electronic exchange and electronic photo-listing system 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 7.

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.

Section not amended; internal reference change applied

232.133 Appeal.

1. An interested party aggrieved by an order or decree of the juvenile court may appeal from the court for review of questions of law or fact. However, an order adjudicating a child to have committed a delinquent act, entered pursuant to section 232.47, shall not be appealed until the court enters a corresponding dispositional order pursuant to section 232.52. An appeal that affects the custody of a child shall be heard at the earliest practicable time.

2. Except for appeals from an order entered pursuant to section 232.117, appellate procedures shall be governed by the same provisions applicable to appeals from the district court. The supreme court may prescribe rules to expedite the resolution of appeals from final orders entered pursuant to section 232.117.

3. The pendency of an appeal or application therefor shall not suspend the order of the juvenile court regarding a child and shall not discharge the child from the custody of the court or the agency, association, facility, institution or person to whom the court has transferred legal custody unless the

appellate court otherwise orders on application of an appellant.

4. If the appellate court does not dismiss the proceedings and discharge the child, the appellate court shall affirm or modify the order of the juvenile court and remand the child to the jurisdiction of the juvenile court for disposition not inconsistent with the appellate court’s finding on the appeal.

2001 Acts, ch 117, §1
Subsections 1 and 2 amended

232.142 Maintenance and cost of juvenile homes — fund.

1. County boards of supervisors which singly or in conjunction with one or more other counties provide and maintain juvenile detention and juvenile shelter care homes are subject to this section.

2. For the purpose of providing and maintaining a county or multicounty home, the board of supervisors of any county may issue general county purpose bonds in accordance with sections 331.441 to 331.449. Expenses for providing and maintaining a multicounty home shall be paid by the counties participating in a manner to be determined by the boards of supervisors.

3. A county or multicounty juvenile detention home approved pursuant to this section shall receive financial aid from the state in a manner approved by the director. Aid paid by the state shall be at least ten percent and not more than fifty percent of the total cost of the establishment, improvements, operation, and maintenance of the home.

4. The director shall adopt minimal rules and standards for the establishment, maintenance, and operation of such homes as shall be necessary to effect the purposes of this chapter. The rules shall apply the requirements of section 237.8, concerning employment and evaluation of persons with direct responsibility for a child or with access to a child when the child is alone and persons residing in a child foster care facility, to persons employed by or residing in a home approved under this section. The director shall, upon request, give guidance and consultation in the establishment and administration of the homes and programs for the homes.

5. The director shall approve annually all such homes established and maintained under the provisions of this chapter. A home shall not be approved unless it complies with minimal rules and standards adopted by the director and has been inspected by the department of inspections and appeals.

6. A juvenile detention home fund is created in the state treasury under the authority of the department. The fund shall consist of moneys deposited in the fund pursuant to sections 321.218A and 321A.32A. The moneys in the fund shall be used for the costs of the establishment, improvement,

operation, and maintenance of county or multi-county juvenile detention homes in accordance with annual appropriations made by the general assembly from the fund for these purposes.

2001 Acts, ch 191, §38
NEW subsection 6

232.143 Regional group foster care budget targets.

1. A statewide expenditure target for children in group foster care placements in a fiscal year, which placements are a charge upon or are paid for by the state, shall be established annually in an appropriation bill by the general assembly. The department and the judicial branch shall jointly develop a formula for allocating a portion of the statewide expenditure 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 usage of group foster care in the previous five completed fiscal years and other indicators of need. The expenditure amount determined in accordance with the formula shall be the group foster care budget target for that region. A region may exceed its budget target for group foster care by not more than five percent in a fiscal year, provided the overall funding allocated by the department for all child welfare services in the region is not exceeded.

2. For each of the department's regions, representatives appointed by the department and the juvenile court shall establish a plan for containing the expenditures for children placed in group foster care ordered by the court within the budget 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 child welfare services within the amount appropriated by the general assembly for that purpose. Each regional plan shall be established within sixty days of the date by which the group foster care budget target for the region is determined. 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.

Provisions of this section applicable to juvenile court and juvenile court representatives shall instead apply to juvenile court services and juvenile court services representatives for fiscal year beginning July 1, 2001; 2001 Acts, ch 191, §14, 53

Section not amended; footnote revised

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 915.25. 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.

g. The child's foster parent or an individual providing preadoptive care to the child.

4. Official juvenile court records enumerated in section 232.2, subsection 38, paragraph "e", relating to paternity, support, or the termination of parental rights, shall be disclosed, upon request, to the child support recovery unit without court order.

5. 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.

6. 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.

7. Social records prior to adjudication may be disclosed without court order to the superintendent or superintendent's designee of a school district, authorities in charge of an accredited non-public school, or any other state or local agency that is part of the juvenile justice system, in accordance with an interagency agreement established under section 280.25. The disclosure shall only include identifying information that is necessary to fulfill the purpose of the disclosure. The social records disclosed shall be used solely for the purpose of determining the programs and services appropriate to the needs of the child or the family of the child and shall not be disclosed for any other purpose unless otherwise provided by law.

8. 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.

9. 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.

10. The state agency designated to enforce support obligations may release information as necessary in order to meet statutory responsibilities.

11. Release of official juvenile court records to a victim of a delinquent act is subject to the provisions of section 915.24, notwithstanding contrary provisions of this chapter.

2001 Acts, ch 79, §1

NEW subsection 4 and former subsections 4 – 10 renumbered as 5 – 11

232.158A Legal risk placement.

1. Notwithstanding any provision of the interstate compact on the placement of children to the contrary, the department of human services shall permit the legal risk placement of a child under the interstate compact on the placement of children if the prospective adoptive parent provides a legal risk statement, in writing, acknowledging all of the following:

a. That the placement is a legal risk placement.

b. That the court of the party state of the sending agency retains jurisdiction over the child for purposes of the termination of the parental rights of the biological parents.

c. That if termination of parental rights can-

not be accomplished in accordance with applicable laws, the child shall be promptly returned to the party state of the sending agency to be returned to the child's biological parent or placed as deemed appropriate by a court of the party state of the sending agency.

d. That the prospective adoptive parent assumes full legal, financial, and other risks associated with the legal risk placement and that the prospective adoptive parent agrees to hold the department of human services harmless for any disruption or failure of the placement.

e. That the prospective adoptive parent shall provide support and medical and other appropriate care to the child pending the termination of parental rights of the biological parents and shall assume liability for all costs associated with the return of the child to the party state of the sending agency if the placement is disrupted or fails.

2. Any written legal risk statement utilized in establishing a legal risk placement shall, at a minimum, state all of the information required under subsection 1, shall be signed by any prospective adoptive parent, and shall be notarized. The legal risk statement shall also contain the following notice printed in clearly legible type: If termination of parental rights is not accomplished and return of the child to the biological parent is required, the prospective adoptive parents are encouraged to seek mental health counseling to address any resulting psychological or family problems.

3. For the purposes of this section, "legal risk placement" means the placement of a child, who is to be adopted, with a prospective adoptive parent prior to the termination of parental rights of the biological parents, under which the prospective adoptive parent assumes the risk that if the parental rights of the biological parents are not terminated the child shall be returned to the biological parents or placed as deemed appropriate by a court of the party state of the sending agency, and under which the prospective adoptive parent assumes other risks and liabilities specified in a written agreement.

2001 Acts, ch 57, §1

NEW section

232.175 Placement oversight.

Placement oversight shall be provided pursuant to this division when the parent, guardian, or custodian of a child with mental retardation or other developmental disability requests placement of the child in foster family care for a period of more than thirty days. The oversight shall be provided through review of the placement every six months by the department's foster care review committees or by a local citizen foster care review board. Court oversight shall be provided prior to the initial placement and at periodic intervals which shall not exceed twelve months. It is the purpose and policy of this division to assure the existence of

oversight safeguards as required by the federal Child Welfare Act of 1980, Pub. L. No. 96-272, as codified in 42 U.S.C. § 671(a)(16), 627(a)(2)(B), and 675(1),(5), while maintaining parental decision-making authority.

99 Acts, ch 111, §1, 7
1999 amendment is effective September 6, 2000; 99 Acts, ch 111, §7
Section amended

232.178 Petition.

1. For a placement initiated on or after July 1, 1992, the department shall file a petition to initiate a voluntary placement proceeding prior to the child's placement in accordance with criteria established pursuant to the federal Child Welfare Act of 1980, Pub. L. No. 96-272, as codified in 42 U.S.C. § 627(a). For a placement initiated before July 1, 1992, the department shall file a petition to approve placement on or before September 1, 1992.

2. The petition and subsequent court documents shall be entitled "In the interests of, a child".

3. The petition shall state the names and residence of the child and the child's living parents, guardian, custodian, and guardian ad litem, if any, and the age of the child.

4. The petition shall describe the child's emotional, physical, or intellectual disability which requires care and treatment; the reasonable efforts to maintain the child in the child's home; the department's request to the family of a child with mental retardation, other developmental disability, or organic mental illness to determine if any services or support provided to the family will enable the family to continue to care for the child in the child's home; and the reason the child's parent, guardian, or custodian has requested a foster family care placement. The petition shall also describe the commitment of the parent, guardian, or custodian in fulfilling the responsibilities defined in the case permanency plan and how the placement will serve the child's best interests.

99 Acts, ch 111, §2, 7
1999 amendment to subsection 4 is effective September 6, 2000; 99 Acts, ch 111, §7
Subsection 4 amended

232.182 Initial determination.

1. Upon the filing of a petition, the court shall fix a time for an initial determination hearing and give notice of the hearing to the child's parent, guardian, or custodian, counsel or guardian ad litem, and the department.

2. A parent who does not have custody of the child may petition the court to be made a party to proceedings under this division.

3. An initial determination hearing is open to the public unless the court, on the motion of any of the parties or upon the court's own motion, excludes the public. The court shall exclude the public from a hearing only if the court determines that the possibility of damage or harm to the child out-

weighs the public's interest in having an open hearing. Upon closing the hearing to the public, the court may admit those persons who have direct interest in the case or in the work of the court.

4. The hearing shall be informal and all relevant and material evidence shall be admitted.

5. After the hearing is concluded, the court shall make and file written findings as to whether reasonable efforts, as defined in section 232.102, subsection 10, have been made and whether the voluntary foster family care placement is in the child's best interests. The court shall order foster family care placement in the child's best interests if the court finds that all of the following conditions exist:

a. The child has an emotional, physical, or intellectual disability which requires care and treatment.

b. The child's parent, guardian, or custodian has demonstrated a willingness or ability to fulfill the responsibilities defined in the case permanency plan.

c. Reasonable efforts have been made and the placement is in the child's best interests.

d. A determination that services or support provided to the family of a child with mental retardation, other developmental disability, or organic mental illness will not enable the family to continue to care for the child in the child's home.

If the court finds that reasonable efforts have not been made and that services or support are available to prevent the placement, the court may order the services or support to be provided to the child and the child's family. If the court finds that the foster care placement is necessary and the child's parent, guardian, or custodian has not demonstrated a commitment to fulfill the responsibilities defined in the child's case permanency plan, the court shall cause a child in need of assistance petition to be filed.

5A. If the court orders placement of the child into foster care, the court or the department shall establish a support obligation for the costs of the placement pursuant to section 234.39.

6. The hearing may be waived and the court may issue the findings and order required under subsection 5 on the basis of the department's written report if all parties agree to the hearing's waiver and the department's written report.

99 Acts, ch 111, §3, 4, 7
1999 amendment to subsection 5 and strike of subsection 7 are effective September 6, 2000; 99 Acts, ch 111, §7
Dispositional review of orders for group foster care placement in effect on September 6, 2000; 99 Acts, ch 111, §6, 7
Subsection 5, unnumbered paragraph 1 amended
Subsection 7 stricken

232.183 Dispositional hearing.

1. Following an entry of an initial determination order pursuant to section 232.182, the court shall hold a dispositional hearing in order to determine the future status of the child based on the child's best interests. Notice of the hearing shall be given to the child and the child's parent, guard-

ian, or custodian, and the department.

2. The dispositional hearing shall be held within twelve months of the date the child was placed in foster care.

3. A dispositional hearing is open to the public unless the court, on the motion of any of the parties or upon the court's own motion, excludes the public. The court shall exclude the public from a hearing if the court determines that the possibility of damage or harm to the child outweighs the public's interest in having an open hearing. Upon closing the hearing to the public, the court may admit those persons who have direct interest in the case or in the work of the court.

4. The hearing shall be informal and all relevant and material evidence shall be admitted.

5. Following the hearing, the court shall issue a dispositional order. The dispositional orders which the court may enter, subject to its continuing jurisdiction, are as follows:

a. An order that the child's voluntary placement shall be terminated and the child returned to the child's home and provided with available services and support needed for the child to remain in the home.

b. An order that the child's voluntary placement may continue if the department and the

child's parent or guardian continue to agree to the voluntary placement.

c. If the court finds that the child's parent, guardian, or custodian has failed to fulfill responsibilities outlined in the case permanency plan, an order that the child remain in foster care and that the county attorney or department file, within three days, a petition alleging the child to be a child in need of assistance.

6. With respect to each child whose placement was approved pursuant to subsection 5, the court shall continue to hold periodic dispositional hearings. The hearings shall not be waived or continued beyond twelve months following the last dispositional hearing. After a dispositional hearing, the court shall enter one of the dispositional orders authorized under subsection 5.

7. A dispositional hearing is not required if the court has approved the local citizen foster care review board review procedure, and all parties agree. This provision does not eliminate the initial judicial determination required under section 232.182.

Dispositional review of orders for group foster care placement in effect on September 6, 2000; 99 Acts, ch 111, §6, 7
Section not amended; footnote revised

CHAPTER 233

NEWBORN INFANT CUSTODY RELEASE PROCEDURES (NEWBORN SAFE HAVEN ACT)

233.1 Newborn safe haven Act — definitions.

1. This chapter may be cited as the "*Newborn Safe Haven Act*".

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

a. "*Institutional health facility*" means a hospital as defined in section 135B.1, including a facility providing medical or health services that is open twenty-four hours per day, seven days per week and is a hospital emergency room, or a health care facility as defined in section 135C.1.

b. "*Newborn infant*" means a child who is, or who appears to be, fourteen days of age or younger.

2001 Acts, ch 67, §1, 13
NEW section

233.2 Newborn infant custody release procedures.

1. A parent of a newborn infant may voluntarily release custody of the newborn infant by relinquishing physical custody of the newborn infant, without expressing an intent to again assume physical custody, at an institutional health facility or by authorizing another person to relinquish physical custody on the parent's behalf. If physical custody of the newborn infant is not relinquished

directly to an individual on duty at the institutional health facility, the parent may take other actions to be reasonably sure that an individual on duty is aware that the newborn infant has been left at the institutional health facility. The actions may include but are not limited to making telephone contact with the institutional health facility or a 911 service. For the purposes of this chapter and for any judicial proceedings associated with the newborn infant, a rebuttable presumption arises that the person who relinquishes physical custody at an institutional health facility in accordance with this section is the newborn infant's parent or has relinquished physical custody with the parent's authorization.

2. *a.* Unless the parent or other person relinquishing physical custody of a newborn infant clearly expresses an intent to return to again assume physical custody of the newborn infant, an individual on duty at the facility at which physical custody of the newborn infant was relinquished pursuant to subsection 1 shall take physical custody of the newborn infant. The individual on duty may request the parent or other person to provide the name of the parent or parents and information on the medical history of the newborn infant and

the newborn infant's parent or parents. However, the parent or other person is not required to provide the names or medical history information to comply with this section. The individual on duty may perform reasonable acts necessary to protect the physical health or safety of the newborn infant. The individual on duty and the institutional health facility in which the individual was on duty are immune from criminal or civil liability for any acts or omissions made in good faith to comply with this section.

b. If the physical custody of the newborn infant is relinquished at an institutional health facility, the state shall reimburse the institutional health facility for the institutional health facility's actual expenses in providing care to the newborn infant and in performing acts necessary to protect the physical health or safety of the newborn infant. The reimbursement shall be paid from monies appropriated for this purpose to the department of human services.

c. The individual on duty or other person designated by the institutional health facility at which physical custody of the newborn infant was relinquished shall submit the certificate of birth report as required pursuant to section 144.14.

3. As soon as possible after the individual on duty assumes physical custody of a newborn infant released under subsection 1, the individual shall notify the department of human services and the department shall take the actions necessary to assume the care, control, and custody of the newborn infant. The department shall immediately notify the juvenile court and the county attorney of the department's action and the circumstances surrounding the action and request an ex parte order from the juvenile court ordering, in accordance with the requirements of section 232.78, the department to take custody of the newborn infant. Upon receiving the order, the department shall take custody of the newborn infant. Within twenty-four hours of taking custody of the newborn infant, the department shall notify the juvenile court and the county attorney in writing of the department's action and the circumstances surrounding the action.

4. a. Upon being notified in writing by the department under subsection 3, the county attorney shall file a petition alleging the newborn infant to be a child in need of assistance in accordance with section 232.87 and a petition for termination of parental rights with respect to the newborn infant in accordance with section 232.111, subsection 2, paragraph "a". A hearing on a child in need of assistance petition filed pursuant to this subsection shall be held at the earliest practicable time. A hearing on a termination of parental rights petition filed pursuant to this subsection shall be held no later than thirty days after the day the physical custody of the newborn child was relinquished in accordance with subsection 1 unless the juvenile

court continues the hearing beyond the thirty days for good cause shown.

b. Notice of a petition filed pursuant to this subsection shall be provided to any known parent and others in accordance with the provisions of chapter 232 and shall be served upon any putative father registered with the state registrar of vital statistics pursuant to section 144.12A. In addition, prior to holding a termination of parental rights hearing with respect to the newborn infant, notice by publication shall be provided as described in section 600A.6, subsection 5.

5. Reasonable efforts, as defined in section 232.102, that are made in regard to the newborn infant shall be limited to the efforts made in a timely manner to finalize a permanency plan for the newborn infant.

6. An individual on duty at an institutional health facility who assumes custody of a newborn infant upon the release of the newborn infant under subsection 1 shall be provided notice of any hearing held concerning the newborn infant at the same time notice is provided to other parties to the hearing and the individual may provide testimony at the hearing.

2001 Acts, ch 67, §2, 13
NEW section

233.3 Immunity.

Any person authorized by the parent to assist with release of custody in accordance with section 233.2 by relinquishing physical custody of the newborn infant or to otherwise act on the parent's behalf is immune from criminal prosecution for abandonment or neglect of the newborn infant under section 726.3 or 726.6 and civil liability for any reasonable acts or omissions made in good faith in assisting with the release.

2001 Acts, ch 67, §3, 13
Parental immunity, see §726.3, 726.6
NEW section

233.4 Rights of parents.

Either parent of a newborn infant whose custody was released in accordance with section 233.2 may intervene in the child in need of assistance or termination of parental rights proceedings held regarding the newborn infant and request that the juvenile court grant custody of the newborn infant to the parent. The requester must show by clear and convincing evidence that the requester is the parent of the newborn infant. If the court determines that the requester is the parent of the newborn infant and that granting custody of the newborn infant to the parent is in the newborn infant's best interest, the court shall issue an order granting custody of the newborn infant to the parent. In addition to such order, the court may order services for the newborn infant and the parent as are in the best interest of the newborn infant.

2001 Acts, ch 67, §4, 13
NEW section

233.5 Confidentiality protections.

1. In addition to any other privacy protection established in law, a record that is developed, acquired, or held in connection with an individual's good faith effort to voluntarily release a newborn infant in accordance with this chapter and any identifying information concerning the individual shall be kept confidential. Such record shall not be inspected or the contents disclosed except as provided in this section.

2. A record described in subsection 1 may be inspected and the contents disclosed without court order to the following:

a. The court and professional court staff, including juvenile court officers.

b. The newborn infant and the newborn infant's counsel.

c. The newborn infant's parent, guardian, custodian, and those persons' counsel.

d. The newborn infant's court-appointed special advocate and guardian ad litem.

e. The county attorney and the county attorney's assistants.

f. An agency, association, facility, or institution which has custody of the newborn infant, or is legally responsible for the care, treatment, or supervision of the newborn infant.

g. The newborn infant's foster parent or an individual providing preadoptive care to the newborn infant.

3. Pursuant to court order a record described in subsection 1 may be inspected by and the contents may be disclosed to any of the following:

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.

4. Any person who knowingly discloses, receives, or makes use or permits the use of information derived directly or indirectly from such a record or discloses identifying information concerning such individual, except as provided by this section, commits a serious misdemeanor.

2001 Acts, ch 67, §5, 13
NEW section

233.6 Educational and public information.

The department of human services, in consultation with the Iowa department of public health and the department of justice, shall develop and distribute the following:

1. An information card or other publication for distribution by an institutional health facility to a parent who releases custody of a newborn infant in accordance with this chapter. The publication shall inform the parent of a parent's rights under section 233.4, explain the request for medical history information under section 233.2, subsection 2, and provide other information deemed pertinent by the departments.

2. Educational materials, public information announcements, and other resources to develop awareness of the availability of the newborn safe haven Act, among adolescents, young parents, and others who might avail themselves of the Act.

3. Signage that may be used to identify the institutional health facilities at which physical custody of a newborn infant may be relinquished in accordance with this chapter.

2001 Acts, ch 67, §6, 13
NEW section

CHAPTER 234

CHILD AND FAMILY SERVICES

234.6 Powers and duties of the administrator.

The administrator shall be vested with the authority to administer the family investment program, state supplementary assistance, food programs, child welfare, and emergency relief, family and adult service programs, and any other form of public welfare assistance and institutions that are placed under the administrator's administration. The administrator shall perform duties, formulate and adopt rules as may be necessary; shall outline policies, dictate procedure, and delegate such powers as may be necessary for competent and efficient administration. Subject to restrictions that may be imposed by the director of human services and the council on human services, the administrator may abolish, alter, consolidate, or establish

subdivisions and may abolish or change offices previously created. The administrator may employ necessary personnel and fix their compensation; may allocate or reallocate functions and duties among any subdivisions now existing or later established; and may adopt rules relating to the employment of personnel and the allocation of their functions and duties among the various subdivisions as competent and efficient administration may require.

The administrator shall:

1. Cooperate with the federal social security board created by Title VII of the Social Security Act [42 U.S.C. 901], enacted by the 74th Congress of the United States and approved August 14, 1935, or other agency of the federal government for public welfare assistance, in such reasonable

manner as may be necessary to qualify for federal aid, including the making of such reports in such form and containing such information as the federal social security board, from time to time, may require, and to comply with such regulations as such federal social security board, from time to time, may find necessary to assure the correctness and verification of such reports.

2. Furnish information to acquaint the public generally with the operation of the acts under the jurisdiction of the administrator.

3. With the approval of the director of human services, the governor, the director of management, and the director of revenue and finance, set up from the funds under the administrator's control and management an administrative fund and from the administrative fund pay the expenses of operating the division.

4. Notwithstanding any provisions to the contrary in chapter 239B relating to the consideration of income and resources of claimants for assistance, the administrator, with the consent and approval of the director of human services and the council on human services, shall make such rules as may be necessary to qualify for federal aid in the assistance programs administered by the administrator.

5. The department of human services shall have the power and authority to use the funds available to it, to purchase services of all kinds from public or private agencies to provide for the needs of children, including but not limited to psychiatric services, supervision, specialized group, foster homes and institutional care.

6. Have authority to use funds available to the department, subject to any limitations placed on the use thereof by the legislation appropriating the funds, to provide to or purchase, for families and individuals eligible therefor, services including but not limited to the following:

a. Child care for children or adult day services, in facilities which are licensed or are approved as meeting standards for licensure.

b. Foster care, including foster family care, group homes and institutions.

c. Intensive family preservation services and family-centered services, as defined in section 232.102, subsection 10, paragraph "b".

d. Family planning.

e. Protective services.

f. Services or support provided to a child with mental retardation or other developmental disability or to the child's family.

g. Transportation services.

h. Any services, not otherwise enumerated in this subsection, authorized by or pursuant to the United States Social Security Act of 1934, as amended.

7. Administer the food programs authorized by federal law, and recommend rules necessary in

the administration of those programs to the director for promulgation pursuant to chapter 17A.

8. Provide consulting and technical services to the director of the department of education, or the director's designee, upon request, relating to pre-kindergarten, kindergarten, and before and after school programming and facilities.

9. Recommend rules for their adoption by the council on human services for before and after school child care programs, conducted within and by or contracted for by school districts, that are appropriate for the ages of the children who receive services under the programs.

10. In determining the reimbursement rate for services purchased by the department of human services from a person or agency, the department shall not include private moneys contributed to the person or agency unless the moneys are contributed for services provided to a specific individual.

99 Acts, ch 111, §5, 7; 2001 Acts, ch 64, §5
1999 amendment to subsection 6, paragraph f, is effective September 6, 2000; 99 Acts, ch 111, §7
Subsection 6, paragraphs a and f amended

234.12A Electronic benefits transfer program.

1. The department of human services may establish an electronic benefits transfer program utilizing electronic funds transfer systems. The program, if established, shall at a minimum provide for all of the following:

a. A retailer shall not be required to make cash disbursements or to provide, purchase, or upgrade electronic funds transfer system equipment as a condition of participation in the program.

b. A retailer providing electronic funds transfer system equipment for transactions pursuant to the program shall be reimbursed seven cents for each approved transaction pursuant to the program utilizing the retailer's equipment.

c. A retailer that provides electronic funds transfer system equipment for transactions pursuant to the program and who makes cash disbursements pursuant to the program utilizing the retailer's equipment shall be paid a fee of seven cents by the department for each cash disbursement transaction by the retailer.

2. A point-of-sale terminal which is used only for purchases from a retailer by electronic benefits transfer utilizing electronic funds transfer systems is not a satellite terminal as defined in section 527.2.

3. For the purposes of this section, "retailer" means a business authorized by the United States department of agriculture to accept food stamp benefits.

2001 Acts, ch 191, §39
Expansion of program to meet federal requirements; extension of time for implementation; 2001 Acts, ch 191, §3, 53
Subsection 1, paragraphs b and c amended

234.35 When state to pay foster care costs.

1. The department of human services is responsible for paying the cost of foster care for a child, according to rates established pursuant to section 234.38, under any of the following circumstances:

a. When a court has committed the child to the director of human services or the director's designee.

b. When a court has transferred legal custody of the child to the department of human services.

c. When the department has agreed to provide foster care services for the child for a period of not more than thirty days on the basis of a signed placement agreement between the department and the child's parent or guardian initiated on or after July 1, 1992.

d. When the child has been placed in emergency care for a period of not more than thirty days upon approval of the director or the director's designee.

e. When a court has entered an order transferring the legal custody of the child to a foster care placement pursuant to section 232.52, subsection 2, paragraph "d", or section 232.102, subsection 1. However, payment for a group foster care placement shall be limited to those placements which conform to a regional group foster care plan established pursuant to section 232.143.

f. When the department has agreed to provide foster care services for a child who is eighteen years of age or older on the basis of a signed placement agreement between the department and the child or the person acting on behalf of the child.

g. When the department has agreed to provide foster care services for the child on the basis of a signed placement agreement initiated before July 1, 1992, between the department and the child's parent or guardian.

h. When the child is placed in shelter care pursuant to section 232.20, subsection 1, or section 232.21.

i. When the court has entered an order in a voluntary foster care placement proceeding pursuant to section 232.182, subsection 5, placing the child into foster care.

2. Except as provided under section 234.38 for direct payment of foster parents, payment for foster care costs shall be limited to foster care providers with whom the department has a contract in force.

3. Payment for foster care services provided to a child who is eighteen years of age or older shall be limited to the following:

a. For a child who is eighteen years of age, fam-

ily foster care or independent living arrangements.

b. For a child who is nineteen years of age, independent living arrangements.

c. For a child who is at imminent risk of becoming homeless or failing to graduate from high school or to obtain a graduate equivalency diploma, if the services are in the child's best interests, funding is available for the services, and an appropriate alternative service is unavailable.

State funding for shelter care paid pursuant to subsection 1, paragraph h, limited for fiscal year beginning July 1, 2001; 2001 Acts, ch 191, §14
Section not amended; footnote added

234.38 Foster care reimbursement rates.

The department of human services shall make reimbursement payments directly to foster parents for services provided to children pursuant to section 234.6, subsection 6, paragraph "b", or section 234.35. In any fiscal year, the reimbursement rate shall be based upon sixty-five percent of the United States department of agriculture estimate of the cost to raise a child in the calendar year immediately preceding the fiscal year. The department may pay an additional stipend for a child with special needs.

Rates for fiscal year beginning July 1, 2001; 2001 Acts, ch 191, §31
Section not amended; footnote revised

234.43 and 234.44 Reserved.

MARRIAGE INITIATIVE GRANT FUND

234.45 Iowa marriage initiative grant fund.

1. An Iowa marriage initiative grant fund is established in the state treasury under the authority of the department of human services. The grant fund shall consist of moneys appropriated to the fund and notwithstanding section 8.33 such moneys shall not revert to the fund from which appropriated at the close of the fiscal year but shall remain in the Iowa marriage initiative grant fund. Moneys credited to the fund shall be used as directed in appropriations made by the general assembly for funding of services to support marriage and to encourage the formation and maintenance of two-parent families that are secure and nurturing.

2. It is the intent of the general assembly to credit to the Iowa marriage initiative grant fund, federal moneys provided to the state for the express purpose of supporting marriage or two-parent families.

2001 Acts, ch 191, §37
NEW section

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 this section.

2. Access to report data and disposition data subject to placement in the central registry pursuant to section 232.71D 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 to 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 assessment 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 assessment of a child abuse report.

(3) To a law enforcement officer responsible for assisting in an assessment of a child abuse allegation or for the temporary emergency removal of a child from the child's home.

(4) To a multidisciplinary team, or to parties to an interagency agreement entered into pursuant to section 280.25, if the department of human services approves the composition of the multidisciplinary team or the relevant provisions of the interagency agreement and determines that access to the team or to the parties to the interagency agreement is necessary to assist the department in the diagnosis, assessment, and disposition of a child abuse case.

(5) In an individual case, to each mandatory reporter who reported the child abuse.

(6) To the county attorney.

(7) To the juvenile court.

(8) 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 alleged child abuse

under section 232.71B.

(9) To a 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 department deems access to report data and disposition data by the person or agency to be necessary.

c. Individuals, agencies, or facilities providing care to a child, but only with respect to disposition data and, if authorized in law to the extent necessary for purposes of an employment evaluation, report data, for cases of founded child abuse placed in the central registry in accordance with section 232.71D as follows:

(1) To an administrator of a psychiatric medical institution for children licensed under chapter 135H.

(2) To an administrator of a child foster care facility licensed under chapter 237 if the data concerns a person employed or being considered for employment by the facility.

(3) To an administrator of a child care facility registered or licensed under chapter 237A if the data concerns a person employed or being considered for employment by or living in the facility.

(4) To the superintendent of the Iowa braille and sight saving school if the data concerns a person employed or being considered for employment or living in the school.

(5) To the superintendent of the school for the deaf if the data concerns a person employed or being considered for employment or living in the school.

(6) To an administrator of a community mental health center accredited under chapter 230A if the data concerns a person employed or being considered for employment by the center.

(7) 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 data concerns a person employed by or being considered for employment by the facility or program.

(8) 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 data concerns a person employed by or being considered by the agency for employment.

(9) To the administrator of an agency providing mental health, mental retardation, or developmental disability services under a county management plan developed pursuant to section 331.439, if the data concerns a person employed by or being considered by the agency for employment.

(10) To an administrator of a child care resource and referral agency which has entered into

an agreement authorized by the department to provide child care resource and referral services. Access is authorized if the data concerns a person providing child 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.

d. Report data and disposition data, and assessment data to the extent necessary for resolution of the proceeding, 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 data 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 report data and disposition data as provided in section 235A.19.

(4) To an expert witness at any stage of an appeal necessary for correction of report data and disposition data as provided in section 235A.19.

(5) To a probation or parole officer, juvenile court officer, court appointed special advocate as defined in section 232.2, 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.

(6) To the department of justice for purposes of review by the prosecutor's review committee or the commitment of sexually violent predators as provided in chapter 229A.

(7) Each board of examiners specified under chapter 147 and the Iowa department of public health for the purpose of licensure, certification or registration, disciplinary investigation, or the renewal of licensure, certification or registration, or disciplinary proceedings of health care professionals.

e. Others as follows, but only with respect to report data and disposition data for cases of founded child abuse subject to placement in the registry pursuant to section 232.71D:

(1) To a person conducting bona fide research on child abuse, but without data identifying individuals named in a child abuse report, unless having that data 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 data.

(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 department.

(3) To the department of justice for the sole purpose of the filing of a claim for restitution or compensation pursuant to sections 915.21 and 915.84. Data provided pursuant to this subpara-

graph is subject to the provisions of section 915.90.

(4) To a legally constituted child protection agency of another state which is investigating or assessing or treating a child named in a report as having been abused or which is investigating or assessing 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 care if the person is not registered or licensed to operate a child 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 the Iowa board for the treatment of sexual abusers for purposes of certifying sex offender treatment providers.

(14) To an employee or agent of the department 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.

(15) To an employee of the department responsible for an adoptive placement, a certified adoption investigator, or licensed child placing agency responsible for an adoptive placement.

(16) To the superintendent, or the superintendent's designee, of a school district or to the authorities in charge of an accredited nonpublic school for purposes of a volunteer or employment record check.

(17) To the department of inspections and appeals for purposes of record checks of applicants for employment with the department of inspections and appeals.

f. Only with respect to disposition data for cases of founded child abuse subject to placement

in the central registry pursuant to section 232.71D, to a person who submits written authorization from an individual allowing the person access to data pursuant to this subsection on behalf of the individual in order to verify whether the individual is named in a founded child abuse report as having abused a child.

3. Access to report data and disposition data for a case of child abuse determined to meet the definition of child abuse, which data is not subject to placement in the central registry pursuant to section 232.71D, is authorized only to the following persons:

a. Subjects of a report identified in subsection 2, paragraph “a”.

b. Persons involved in an assessment of child abuse identified in subsection 2, paragraph “b”, subparagraphs (2), (3), (4), (6), (7), and (9).

c. Others identified in subsection 2, paragraph “e”, subparagraphs (2), (3), and (6).

d. The department of justice for purposes of review by the prosecutor’s review committee or the commitment of sexually violent predators as provided in chapter 229A.

4. Access to report data for a case of child abuse determined to not meet the definition of child abuse, which data is not subject to placement in the central registry pursuant to section 232.71D, is authorized only to the following:

a. Subjects of a report identified in subsection 2, paragraph “a”.

b. Persons involved in an assessment of child abuse identified in subsection 2, paragraph “b”, subparagraphs (2), (6), and (7).

c. Others identified in subsection 2, paragraph “e”, subparagraph (2).

d. The department of justice for purposes of review by the prosecutor’s review committee or the commitment of sexually violent predators as provided in chapter 229A.

5. Access to disposition data subject to placement in the central registry pursuant to section 232.71D 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 sections 19A.14 and 20.18. Disposition data introduced into a grievance or arbitration proceeding shall not be considered a part of the public record of a case.

6. *a.* 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 assessment of the report. If the child’s state of residency refuses to conduct an assessment, the department shall commence an appropriate assessment.

b. 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 de-

partment shall assist the child’s state of residency in conducting an assessment 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 assessment of the report, the department shall commence an appropriate assessment. The department shall seek to develop protocols with states contiguous to this state for coordination in the assessment of a report of child abuse when a person involved with the report is a resident of another state.

7. Upon the request of a person listed in this subsection, child abuse information relating to a specific case of child abuse involving a fatality or near fatality to a child and reported to the department shall be disclosed to that person by the director of human services. The purpose of the disclosure is to provide for oversight of the department and others involved with the state’s child protection system in order to improve the system. After completing a review of the child abuse information received, an authorized requester may issue a report to the governor regarding the specific case of child abuse. The following persons are authorized to make a request and receive child abuse information under this section relating to a specific case of child abuse involving a fatality or near fatality to a child:

a. The governor or the governor’s designee.

b. The member of the senate or employee of the general assembly designated by the majority leader or minority leader of the senate.

c. The member of the house of representatives or employee of the general assembly designated by the speaker or minority leader of the house of representatives.

8. Upon the request of the governor, the department shall disclose child abuse information to the governor relating to a specific case of child abuse reported to the department.

9. If the department receives a request for child abuse information relating to a case of a fatality or near fatality to a child, within five business days of receiving the request the director of human services or the director’s designee shall consult with the county attorney responsible for prosecution of any alleged perpetrator of the fatality or near fatality and shall disclose child abuse information relating to the case and the child in accordance with this subsection. The director or the director’s designee shall release all child abuse information associated with the case and the child, except for the following:

a. The substance or content of any mental health or psychological information that is confidential under chapter 228.

b. Information that constitutes the substance or contains the content of an attorney work product or is a privileged communication under section 622.10.

c. Information pertaining to the child, the

child's family, or any other person that is not directly related to the cause of the fatality or near fatality.

d. Information that would reveal the identity of any individual who provided information relating to a report of child abuse or an assessment of such a report involving the child.

e. Information that the director or the director's designee reasonably believes is likely to cause mental or physical harm to a sibling of the child or to another child residing in the child's household.

f. Information that the director or the director's designee reasonably believes is likely to jeopardize the prosecution of any alleged perpetrator of the fatality or near fatality.

g. Information that the director or the director's designee reasonably believes is likely to jeopardize the rights of any alleged perpetrator of the fatality or near fatality to a fair trial.

h. Information that the director or the director's designee reasonably believes is likely to undermine an ongoing or future criminal investigation.

i. Information, the release of which is a violation of federal law or regulation.

2001 Acts, ch 8, §2

Subsection 2, paragraph e, NEW subparagraph (17)

235A.16 Requests for child abuse information.

1. Requests for child abuse information shall

be in writing on forms prescribed by the department, except as otherwise provided by subsection 2. Request forms shall require information sufficient to demonstrate authorized access.

2. *a.* Requests for child abuse information may be made orally by telephone where a person making such a request believes that the information is needed immediately and where information sufficient to demonstrate authorized access is provided. In the event that a request is made orally by telephone, a written request form shall nevertheless be filed within seventy-two hours.

b. The department of inspections and appeals may provide access to the single contact repository established under section 135C.33, subsection 6, for criminal and abuse history checks made by those employers, agencies, and other persons that are authorized access to child abuse information under section 235A.15 and are required by law to perform such checks.

3. Subsections 1 and 2 do not apply to child abuse information that is disseminated to an employee of the department of human services, to a juvenile court, or to the attorney representing the department as authorized by section 235A.15.

2001 Acts, ch 191, §40

Subsection 2 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. *a.* "*Dependent adult abuse*" means:

(1) Any of the following as a result of the willful or negligent acts or omissions of a caretaker:

(a) Physical injury to, or injury which is at a variance with the history given of the injury, or un-

reasonable confinement, unreasonable punishment, or assault of a dependent adult.

(b) The commission of a sexual offense under chapter 709 or section 726.2 with or against a dependent adult.

(c) 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, without the informed consent of the dependent adult, including theft, by the use of undue influence, harassment, duress, deception, false representation, or false pretenses.

(d) 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.

(2) 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.

(3) Sexual exploitation of a dependent adult who is a resident of a health care facility, as de-

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.

b. “*Dependent adult abuse*” does not include any of the following:

(1) Circumstances in which the dependent adult declines 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.

(2) Circumstances in which the dependent adult’s caretaker, acting in accordance with the dependent adult’s stated or implied consent, declines 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.

(3) 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 withdrawing of health care is done at the request of the dependent adult or at the request of the dependent adult’s next of kin or guardian pursuant to the applicable procedures under chapter 125, 222, 229, or 633.

6. “*Emergency shelter services*” means and includes, but is not limited to, secure crisis shelters or housing for victims of dependent adult abuse.

7. “*Family or household member*” means a spouse, a person cohabiting with the dependent adult, a parent, or a person related to the dependent adult by consanguinity or affinity, but does not include children of the dependent adult who are less than eighteen years of age.

8. “*Immediate danger to health or safety*” means a situation in which death or severe bodily injury could reasonably be expected to occur without intervention.

9. “*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.

10. “*Legal holiday*” means a legal public holi-

day as defined in section 1C.1.

11. “*Person*” means person as defined in section 4.1.

12. “*Recklessly*” means that a person acts or fails to act with respect to a material element of a public offense, when the person is aware of and consciously disregards a substantial and unjustifiable risk that the material element exists or will result from the act or omission. The risk must be of such a nature and degree that disregard of the risk constitutes a gross deviation from the standard conduct that a reasonable person would observe in the situation.

13. “*Serious injury*” means a disabling mental illness, or a bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

14. “*Support services*” includes but is not limited to community-based services including area agency on aging assistance, mental health services, fiscal management, home health services, housing-related services, counseling services, transportation services, adult day services, respite services, legal services, and advocacy services.

2001 Acts, ch 64, §7
Subsection 14 amended

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 social worker.
- b. A certified psychologist.
- c. 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 supported community living service, sheltered workshop, or work activity center.

d. A person who performs inspections of elder group homes for the department of elder affairs and a resident advocate committee member assigned to an elder group home pursuant to chapter 231B.

3. *a.* 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.

b. The employer or supervisor of a person who is required to or may make a report pursuant to this section shall not apply a policy, work rule, or other requirement that interferes with the person making a report of dependent adult abuse or that results in the failure of another person to make the report.

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 assessment shall include interviews with the dependent adult, and, if appropriate, with the alleged perpetrator of the dependent adult abuse and with any person believed to have knowledge of the circumstances of the case. 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, a social services agency in the state, or any person who is required pursuant to subsection 2 to

report dependent adult abuse, whether or not the person made the specific dependent adult abuse report, shall cooperate and assist in the evaluation upon the request of the department. If the department's assessment reveals that dependent adult abuse exists which might constitute a criminal offense, a report shall be made to the appropriate law enforcement agency. County attorneys and appropriate law enforcement agencies shall also take any other lawful action necessary 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, or shall pursue other remedies provided by law. 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 commits a simple misdemeanor. A person required by this section to report a suspected case of dependent adult abuse who knowingly fails to do so or who knowingly, in violation of subsection 3, interferes with the making of such a report or applies a requirement that results in such a failure 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.

2001 Acts, ch 122, §7 – 10
 Subsection 2, paragraph a amended
 Subsection 2, paragraphs b and c stricken and paragraphs d – f redesignated as b – d
 Subsection 3 amended
 Subsection 7, unnumbered paragraph 1 amended
 Subsection 10 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 or for the purpose of performing record checks as required under section 135C.33.

(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.

(7) Each board of examiners specified under chapter 147 and the Iowa department of public health for the purpose of licensure, certification or registration, disciplinary investigation, or the renewal of licensure, certification or registration, or disciplinary proceedings of health care professionals.

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.

(6) To the administrator of an agency providing mental health, mental retardation, or developmental disability services under a county management plan developed pursuant to section 331.439, 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 sections 915.21 and 915.84.

(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.

(7) To the administrator of an agency providing care to a dependent adult in another state, for the purpose of performing an employment background check.

(8) To the superintendent, or the superintendent's designee, of a school district or to the authorities in charge of an accredited nonpublic school for purposes of a volunteer or employment record check.

(9) The department of inspections and appeals for purposes of record checks of applicants for employment with the department of inspections and appeals.

3. Access to unfounded dependent adult abuse information is authorized only to those persons

identified in subsection 2, paragraph "a", paragraph "b", subparagraphs (2) and (6), and paragraph "e", subparagraph (2).

2001 Acts, ch 8, §3; 2001 Acts, ch 20, §4, 5
 Subsection 2, paragraph b, subparagraph (2) amended
 Subsection 2, paragraph e, subparagraph (7) stricken and subparagraphs (8) and (9) renumbered as (7) and (8)
 Subsection 2, paragraph e, NEW subparagraph (9)

235B.16 Information, education, and training requirements.

1. The department of elder affairs, in cooperation with the department, shall conduct a public information and education program. The elements and goals of the program include but are not limited to:

a. Informing the public regarding the laws governing dependent adult abuse and the reporting requirements for dependent adult abuse.

b. Providing caretakers with information regarding services to alleviate the emotional, psychological, physical, or financial stress associated with the caretaker and dependent adult relationship.

c. Affecting public attitudes regarding the role of a dependent adult in society.

2. The department, in cooperation with the department of elder affairs and the department of inspections and appeals, shall institute a program of education and training for persons, including members of provider groups and family members, who may come in contact with dependent adult abuse. The program shall include but is not limited to instruction regarding recognition of dependent adult abuse and the procedure for the reporting of suspected abuse.

3. The content of the continuing education required pursuant to chapter 272C for a licensed professional providing care or service to a dependent adult shall include, but is not limited to, the responsibilities, obligations, powers, and duties of a person regarding the reporting of suspected dependent adult abuse, and training to aid the professional in identifying instances of dependent adult abuse.

4. The department of inspections and appeals shall provide training to investigators regarding the collection and preservation of evidence in the case of suspected dependent adult abuse.

5. *a.* For the purposes of this subsection, "licensing board" means an examining board designated in section 147.13, the board of educational examiners created in section 272.2, or a licensing board as defined in section 272C.1.

b. A person required to report cases of dependent adult abuse pursuant to section 235B.3, other than a physician whose professional practice does not regularly involve providing primary health care to adults, shall complete two hours of training relating to the identification and reporting of initial dependent adult abuse within six months of initial employment or self-employment which involves the examination, attending, counseling, or treat-

ment of adults on a regular basis. Within one month of initial employment or self-employment, the person shall obtain a statement of the abuse reporting requirements from the person's employer or, if self-employed, from the department. The person shall complete at least two hours of additional dependent adult abuse identification and reporting training every five years.

c. If the person is an employee of a hospital or similar public or private facility, the employer shall be responsible for providing the training. To the extent that the employer provides approved training on the employer's premises, the hours of training completed by employees shall be included in the calculation of nursing or service hours required to be provided to a patient or resident per day. If the person is self-employed, employed in a licensed or certified profession, or employed by a facility or program that is subject to licensure, regulation, or approval by a state agency, the person shall obtain the training as provided in paragraph "d".

d. The person may complete the initial or additional training requirements as a part of any of the following that are applicable to the person:

(1) A continuing education program required under chapter 272C and approved by the appropriate licensing or examining board.

(2) A training program using a curriculum approved by the abuse education review panel established by the director of public health pursuant to section 135.11.

(3) A training program using such an approved curriculum offered by the department of human services, the department of elder affairs, the department of inspections and appeals, the Iowa law enforcement academy, or a similar public agency.

e. A person required to complete both child abuse and dependent adult abuse mandatory reporter training may complete the training through a program which combines child abuse and dependent adult abuse curricula and thereby meet the training requirements of both this subsection and section 232.69 simultaneously. A person who is a mandatory reporter for both child abuse and dependent adult abuse may satisfy the combined training requirements of this subsection through completion of a two-hour training program, if the training program curriculum is approved by the appropriate licensing or examining board or the abuse education review panel estab-

lished by the director of public health pursuant to section 135.11.

f. A licensing board with authority over the license of a person required to report cases of dependent adult abuse pursuant to section 235B.3 shall require as a condition of licensure that the person is in compliance with the requirements for abuse training under this subsection. The licensing board shall require the person upon licensure renewal to accurately document for the licensing board the person's completion of the training requirements. However, the licensing board may adopt rules providing for waiver or suspension of the compliance requirements, if the waiver or suspension is in the public interest, applicable to a person who is engaged in active duty in the military service of this state or of the United States, to a person for whom compliance with the training requirements would impose a significant hardship, or to a person who is practicing a licensed profession outside this state or is otherwise subject to circumstances that would preclude the person from encountering dependent adult abuse in this state.

g. For persons required to report cases of dependent adult abuse pursuant to section 235B.3, who are not engaged in a licensed profession that is subject to the authority of a licensing board but are employed by a facility or program subject to licensure, registration, or approval by a state agency, the agency shall require as a condition of the renewal of the facility's or program's licensure, registration, or approval, that such persons employed by the facility or program are in compliance with the training requirements of this subsection.

h. For peace officers, the elected or appointed official designated as the head of the agency employing the peace officer shall ensure compliance with the training requirements of this subsection.

i. For persons required to report cases of dependent adult abuse pursuant to section 235B.3 who are employees of state departments and political subdivisions of the state, the department director or the chief administrator of the political subdivision shall ensure the persons' compliance with the training requirements of this subsection.

6. The department shall require an educational program for employees of the registry on the proper use and control of dependent adult abuse information.

2001 Acts, ch 122, §11
Subsection 5 amended

CHAPTER 235C

COUNCIL ON CHEMICALLY EXPOSED INFANTS AND CHILDREN

235C.2 Membership.

The council on chemically exposed infants and

children shall be composed of the following members:

1. Two members of the Iowa department of public health selected by the director of the Iowa department of public health, one from the division of substance abuse, and one from the division of family and community health.

2. The director of human services or the director's designee.

3. The director of the department of human rights or the director's designee.

4. The director of the department of education or the director's designee.

5. The director of the department of corrections or the director's designee.

6. The chairperson of the state maternal and child health advisory council or the chairperson's designee.

7. A physician selected by the board of the Iowa medical society with expertise in the care of the mother and a physician selected by the board of the Iowa medical society with expertise in the care of the infant.

8. A hospital administrator or the administrator's designee selected by the board of the Iowa hospital association.

9. A representative from a community health center located in Iowa selected by the Iowa/Nebraska primary care association.

10. A representative from a maternal and child health center selected by the governor.

11. A representative from a substance abuse treatment program, selected by the governor.

12. Two citizen members, selected by the governor.

13. A representative from the governor's office of drug control policy selected by the office.

14. A representative from the university of Iowa medical school selected by the director of the medical school.

15. A representative from a community-based substance abuse prevention program, selected by the governor.

16. A representative from the juvenile court, selected by the chief justice of the Iowa supreme court.

17. An attorney who practices in the area of juvenile law, selected by the Iowa state bar association.

18. Two consumer representatives selected by the governor, one of whom shall be a parent and one of whom shall be a nonparent family member.

The council shall be staffed by the Iowa department of public health. The council shall elect its own chairperson.

2001 Acts, ch 74, §15
Subsection 8 amended

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 ex-

posed, 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 university of Iowa college of medicine and Des Moines university — osteopathic medical center, 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. This education campaign shall offer information to health professionals on assessment, laboratory testing, 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 child 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.

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. *Meetings.* 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.

2001 Acts, ch 74, §16
Subsection 2, paragraph b amended

CHAPTER 236

DOMESTIC ABUSE

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. A mailing address may be provided by the plaintiff pursuant to section 236.10.

2. Name and address of the parent or guardian filing the petition, if the petition is being filed on behalf of an unemancipated minor. For the purposes of this chapter, "*plaintiff*" includes a person filing an action on behalf of an unemancipated minor. A mailing address may be provided by the plaintiff pursuant to section 236.10.

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.

The filing fee and court costs for an order for protection under this chapter shall be waived for the plaintiff. The clerk of court, the sheriff of any county in this state, and other law enforcement and corrections officers shall perform their duties

relating to service of process without charge to the petitioner. When an order for protection is entered by the court, the court may direct the defendant to pay to the clerk of court the plaintiff's filing fees and reasonable costs of service of process if the court determines the defendant has the ability to pay the plaintiff's fees and costs.

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.

2001 Acts, ch 43, §1
Unnumbered paragraph 2 stricken and rewritten

236.19 Foreign protective orders — registration — enforcement.

1. As used in this section, "*foreign protective order*" means a protective order entered by a court of another state, Indian tribe, or United States territory that 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 certified or authenticated copy of a permanent foreign protective order may be filed with the clerk of the district court in any county that would have venue if the original action was being commenced in this state or in which the person in whose favor the order was entered may be present.

a. The clerk shall file foreign protective orders

that are not certified or authenticated, if supported by an affidavit of a person with personal knowledge, subject to the penalties for perjury. The person protected by the order may provide this affidavit.

b. The clerk shall provide copies of the order as required by section 236.5, except that notice shall not be provided to the respondent without the express written direction of the person in whose favor the order was entered.

3. *a.* A valid foreign protective order has the same effect and shall be enforced in the same manner as a protective order issued in this state whether or not filed with a clerk of court or otherwise placed in a registry of protective orders.

b. A foreign protective order is valid if it meets all of the following:

(1) The order states the name of the protected individual and the individual against whom enforcement is sought.

(2) The order has not expired.

(3) The order was issued by a court or tribunal that had jurisdiction over the parties and subject matter under the law of the foreign jurisdiction.

(4) The order was issued in accordance with the respondent's due process rights, either after the respondent was provided with reasonable notice and an opportunity to be heard before the court or tribunal that issued the order, or in the

case of an ex parte order, the respondent was granted notice and opportunity to be heard within a reasonable time after the order was issued.

c. Proof that a foreign protective order failed to meet all of the factors listed in paragraph "b" shall be an affirmative defense in any action seeking enforcement of the order.

4. A peace officer shall treat a foreign protective order as a valid legal document and shall make an arrest for a violation of the foreign protective order in the same manner that a peace officer would make an arrest for a violation of a protective order issued within this state.

a. The fact that a foreign protective order has not been filed with the clerk of court or otherwise placed in a registry shall not be grounds to refuse to enforce the terms of the order unless it is apparent to the officer that the order is invalid on its face.

b. A peace officer acting reasonably and in good faith in connection with the enforcement of a foreign protective order shall be immune from civil and criminal liability in any action arising in connection with such enforcement.

5. Filing and service costs in connection with foreign protective orders are waived as provided in section 236.3.

2001 Acts, ch 43, §2
Subsection 5 amended

CHAPTER 237

CHILD FOSTER CARE FACILITIES

237.3 Rules.

1. Except as otherwise provided by subsections 3 and 4, the administrator shall promulgate, after their adoption by the council on human services, and enforce in accordance with chapter 17A, administrative rules necessary to implement this chapter. Formulation of the rules shall include consultation with representatives of child foster care providers, and other persons affected by this chapter. The rules shall encourage the provision of child foster care in a single-family, home environment, exempting the single-family, home facility from inappropriate rules.

2. Rules applicable to licensees shall include but are not limited to:

a. Types of facilities which include but are not limited to group foster care facilities and family foster care homes.

b. The number, qualifications, character, and parenting ability of personnel necessary to assure the health, safety and welfare of children receiving child foster care.

c. Programs for education and in-service training of personnel.

d. The physical environment of a facility.

e. Policies for intake, assessment, admission and discharge.

f. Housing, health, safety, and medical care policies for children receiving child foster care. The medical care policies shall include but are not limited to both of the following:

(1) If the health records supplied in accordance with the child's case permanency plan to the foster care provider are incomplete, provision for obtaining additional health information from the child's parent or other source and supplying the additional information to the foster care provider.

(2) Provision for emergency health coverage of the child while the child is engaged in temporary out-of-state travel with the child's foster family.

g. The adequacy of programs available to children receiving child foster care provided by agencies, including but not limited to:

(1) Dietary services.

(2) Social services.

(3) Activity programs.

(4) Behavior management procedures.

(5) Educational programs, including special education as defined in section 256B.2, subsection 2 where appropriate, which are approved by the

state board of education. The department shall not promulgate rules which regulate individual licensees in the subject areas enumerated in this paragraph.

h. Policies for involvement of biological parents.

i. Records a licensee is required to keep, and reports a licensee is required to make to the administrator.

j. Prior to the licensing of an individual as a foster family home, a required, written social assessment of the quality of the living situation in the home of the individual, and a required compilation of personal references for the individual other than those references given by the individual.

k. Elements of a foster care placement agreement outlining rights and responsibilities associated with an individual providing family foster care.

3. Rules governing fire safety in facilities with child foster care provided by agencies shall be promulgated by the state fire marshal pursuant to section 100.1, subsection 5 after consultation with the administrator.

4. Rules governing sanitation, water and waste disposal standards for facilities shall be promulgated by the Iowa department of public health pursuant to section 135.11, subsection 13 after consultation with the administrator.

5. In case of a conflict between rules promulgated pursuant to subsections 3 and 4 and local rules, the more stringent requirement applies.

6. Rules of the department shall not prohibit the licensing, as foster family homes, of individuals who are departmental employees not directly engaged in the administration of the child foster care program pursuant to this chapter.

7. If an agency is accredited by the joint commission on the accreditation of health care organizations under the commission's consolidated standards for residential settings or by the council on accreditation of services for families and children, the department shall modify facility licensure standards applied to the agency in order to avoid duplicating standards applied through accreditation.

8. The department, in consultation with the judicial branch, the division of criminal and juvenile justice planning of the department of human rights, residential treatment providers, the foster care provider association, and other parties which may be affected, shall review the licensing rules pertaining to residential treatment facilities, and examine whether the rules allow the facilities to accept and provide effective treatment to juveniles with serious problems who might not otherwise be placed in those facilities.

9. The department shall adopt rules specifying the elements of a preadoptive care agreement outlining the rights and responsibilities associated

with a person providing preadoptive care, as defined in section 232.2.

10. The department shall adopt rules to administer the exception to the definition of child care in section 237A.1, subsection 3, paragraph "m", allowing a child care facility, for purposes of providing respite care to a foster family home, to provide care, supervision, or guidance of a child for a period of twenty-four hours or more who is placed with the licensed foster family home.

2001 Acts, ch 105, §1, 2, 4
Subsection 2, paragraph f amended
NEW subsection 10

237.13 Foster home insurance fund.

1. For the purposes of this section, "foster home" means either of the following:

a. An individual, as defined in section 237.1, subsection 7, who is licensed to provide child foster care and shall also be known as a "licensed foster home".

b. A guardian appointed on a voluntary petition pursuant to section 232.178, or a voluntary petition of a ward pursuant to section 633.557, or a conservator appointed on a voluntary petition of a ward pursuant to section 633.572, provided the ward has an income that does not exceed one hundred fifty percent of the current federal office of management and budget poverty guidelines and who does not have resources in excess of the criteria for resources under the federal supplemental security income program. However, the ward's ownership of one residence and one vehicle shall not be considered in determining resources.

2. The foster home insurance fund is created within the office of the treasurer of state to be administered by the department of human services. The fund consists of all moneys appropriated by the general assembly for deposit in the fund. The general fund of the state is not liable for claims presented against the fund. The department may contract with another state agency, or private organization, to perform the administrative functions necessary to carry out this section.

3. Except as provided in this section, the fund shall pay, on behalf of each licensed foster home, any valid and approved claim of foster children, their parents, guardians, or guardians ad litem, for damages arising from the foster care relationship and the provision of foster care services. The fund shall also compensate licensed foster homes for property damage, at replacement cost, or for bodily injury, as a result of the activities of the foster child, and reasonable and necessary legal fees incurred in defense of civil claims filed pursuant to subsection 7, paragraph "d", and any judgments awarded as a result of such claims.

4. The fund is not liable for any of the following:

a. A loss arising out of a foster parent's dishonest, fraudulent, criminal, or intentional act.

b. An occurrence which does not arise from the

foster care relationship.

c. A bodily injury arising out of the operation or use of a motor vehicle, aircraft, recreational vehicle, or watercraft owned, operated by, rented, leased, or loaned to, a foster parent.

d. A loss arising out of a foster parent's lascivious acts, indecent contact, or sexual activity, as defined in chapters 702 and 709. Notwithstanding any definition to the contrary in chapters 702 and 709, for purposes of this subsection a child is a person under the age of eighteen.

e. A loss or damage arising out of occurrences prior to July 1, 1988.

f. Exemplary or punitive damages.

g. A loss or damage arising out of conduct which is in violation of administrative rules.

5. Except as provided in this section, the fund shall pay, on behalf of a guardian or conservator, the reasonable and necessary legal costs incurred in defending against a suit filed by a ward or the ward's representative and the damages awarded as a result of the suit, so long as it is determined that the guardian or conservator acted in good faith in the performance of the guardian's or conservator's duties. A payment shall not be made if there is evidence of intentional misconduct or a knowing violation of the law by the guardian or conservator, including, but not limited to, failure to carry out the applicable responsibilities required under chapter 232 and sections 633.633 through 633.635 and 633.641 through 633.650.

6. The fund is not liable for the first one hundred dollars for all claims arising out of one or more occurrences during a fiscal year related to a

single foster home. The fund is not liable for damages in excess of three hundred thousand dollars for all claims arising out of one or more occurrences during a fiscal year related to a single home.

7. Procedures for claims against the fund:

a. A claim against the fund shall be filed in accordance with the claims procedures and on forms prescribed by the department of human services.

b. A claim shall be submitted to the fund within the applicable period of limitations for the appropriate civil action underlying the claim. If a claim is not submitted to the fund within the applicable time, the claim shall be rejected.

c. The department shall issue a decision on a claim within one hundred eighty days of its presentation.

d. A person shall not bring a civil action against a foster parent for which the fund may be liable unless that person has first filed a claim against the fund and the claim has been rejected, or the claim has been filed, approved, and paid in part, and damages in excess of the payment are claimed.

8. All processing of decisions and reports, payment of claims, and other administrative actions relating to the fund shall be conducted by the department of human services.

9. The department of human services shall adopt rules, pursuant to chapter 17A, to carry out the provisions of this section.

2001 Acts, ch 135, §1, 2
Subsection 1, paragraph b amended
Subsection 5 amended

CHAPTER 237A

CHILD CARE FACILITIES

237A.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. "Administrator" means the administrator of the division of the department designated by the director to administer this chapter.

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

3. "Child care" means the care, supervision, and guidance of a child by a person other than the child's parent, guardian, or custodian for periods of less than twenty-four hours per day per child on a regular basis, but does not include care, supervision, and guidance of a child by any of the following:

a. An instructional program for children who are attending prekindergarten as defined by the state board of education under section 256.11 or a higher grade level and are at least four years of age administered by any of the following:

(1) A public or nonpublic school system accredited by the department of education or the state board of regents.

(2) A nonpublic school system which is not accredited by the department of education or the state board of regents.

b. A program provided under section 279.49 or 280.3A.

c. Any of the following church-related programs:

(1) An instructional program.

(2) A youth program other than a preschool, before or after school child care program, or other child care program.

(3) A program providing care to children on church premises while the children's parents are attending church-related or church-sponsored activities on the church premises.

d. Short-term classes of less than two weeks' duration held between school terms or during a

break within a school term.

e. A child care center for sick children operated as part of a pediatrics unit in a hospital licensed by the department of inspections and appeals pursuant to chapter 135B.

f. A program operated not more than one day per week by volunteers which meets all of the following conditions:

(1) Not more than eleven children are served per volunteer.

(2) The program operates for less than four hours during any twenty-four-hour period.

(3) The program is provided at no cost to the children's parent, guardian, or custodian.

g. A program administered by a political subdivision of the state which is primarily for recreational or social purposes and is limited to children who are five years of age or older and attending school.

h. An after school program continuously offered throughout the school year calendar to children who are at least five years of age and are enrolled in school, and attend the program intermittently. The program must be provided through a nominal membership fee or at no cost.

i. A special activity program which meets less than four hours per day for the sole purpose of the special activity. Special activity programs include but are not limited to music or dance classes, organized athletic or sports programs, recreational classes, scouting programs, and hobby or craft clubs or classes.

j. A nationally accredited camp.

k. A structured program for the purpose of providing therapeutic, rehabilitative, or supervisory services to children under any of the following:

(1) A purchase of service or managed care contract with the department.

(2) A contract approved by a local decategorization governance board created under section 232.188.

(3) An arrangement approved by a juvenile court order.

l. Care provided on-site to children of parents residing in an emergency, homeless, or domestic violence shelter.

m. A child care facility providing respite care to a licensed foster family home for a period of twenty-four hours or more to a child who is placed with that licensed foster family home.

4. "Child care center" or "center" means a facility providing child care or preschool services for seven or more children, except when the facility is registered as a child care home.

5. "Child care facility" or "facility" means a child care center, preschool, or a registered child care home.

6. "Child care home" means a person or program providing child care as a family child care home or a group child care home as authorized under section 237A.3.

7. "Children receiving care on a part-time ba-

sis" means children who are present in a child care home for ninety hours per month or less.

8. "Department" means the department of human services.

9. "Director" means the director of human services.

10. *a.* "Family child care home" means a person or program which provides child care to less than seven children at any one time or to less than twelve children at any one time as authorized by section 237A.3, subsection 1.

b. "Group child care home" means a facility providing child care for more than six but less than twelve children as authorized in accordance with section 237A.3, subsection 2, or for less than sixteen children at any one time as authorized in accordance with section 237A.3, subsection 3.

11. "Infant" means a child who is less than twenty-four months of age.

12. "Licensed center" means a center issued a full or provisional license by the department under the provisions of this chapter or a center for which a license is being processed.

13. "Poverty level" means the poverty level defined by the most recently revised poverty income guidelines published by the United States department of health and human services.

14. "Preschool" means a child care facility which provides to children ages three through five, for periods of time not exceeding three hours per day, programs designed to help the children to develop intellectual skills, social skills, and motor skills, and to extend their interest and understanding of the world about them.

15. "School" means kindergarten or a higher grade level.

16. "State child care advisory council" means the state child care advisory council established pursuant to sections 237A.21 and 237A.22.

2001 Acts, ch 105, §3, 4
Subsection 3, NEW paragraph m

237A.3 Registration of child care homes.

1. *a.* A person who operates or establishes a family child care home may apply to the department for registration under this chapter. The department shall issue a certificate of registration upon receipt of a statement from the family child care home that the home complies with rules adopted by the department. The registration certificate shall be posted in a conspicuous place in the family child care home, shall state the name of the registrant, the number of individuals who may be received for care at any one time, and the address of the home, and shall include a check list of registration compliances.

b. No greater number of children than is authorized by the registration certificate shall be kept in the family child care home at any one time. However, a registered or unregistered family child care home may provide care for more than six but

less than twelve children at any one time for a period of less than two hours, provided that each child in excess of six children is attending school in kindergarten or a higher grade level.

c. A family child care home may provide care in accordance with this subsection for more than six but less than twelve children for two hours or more during a day with inclement weather following the cancellation of school classes. The home must have prior written approval from the parent or guardian of each child present in the home concerning the presence of excess children in the home pursuant to this paragraph. The home must have a responsible individual, age fourteen or older, on duty to assist the home provider when more than six children are present in accordance with the provisions of this paragraph. In addition, one or more of the following conditions shall apply to each child present in the home in excess of six children:

(1) The home provides care to the child on a regular basis for periods of less than two hours.

(2) If the child was not present in the family child care home, the child would be unattended.

(3) The home regularly provides care to a sibling of the child.

d. In determining the number of children cared for at any one time in a registered or unregistered family child care home, if the person who operates or establishes the home is a child's parent, guardian, or custodian and the child is not attending school in kindergarten or a higher grade level or is not receiving child care full-time on a regular basis from another person, the child shall be considered to be receiving child care from the person and shall be counted as one of the children cared for in the home.

e. The registration process may be repeated on an annual basis.

f. A child care home provider or program which is not a family child care home by reason of the definition of child care in section 237A.1, but which provides care, supervision, or guidance to a child may be issued a certificate of registration under this chapter.

2. a. A person shall not operate or establish a group child care home unless the person obtains a certificate of registration under this chapter. Two persons who comply with the individual requirements for registration as a group child care provider may request that the certificate be issued to the two persons jointly and the department shall issue the joint certificate provided the group child care home requirements for registration are met. All other requirements of this chapter for registered family child care homes and the rules adopted under this chapter for registered family child care homes apply to group child care homes. In addition, the department shall adopt rules relating to the provision in group child care homes for a separate area for sick children. In consultation with the state fire marshal, the department shall adopt

rules relating to the provision of fire extinguishers, smoke detectors, and two exits accessible to children.

b. Except as provided in subsection 3, a group child care home shall not provide child care to more than eleven children at any one time. If there are more than six children present for a period of two hours or more, the group child care home must have at least one responsible individual who is at least fourteen years of age present to assist the group child care provider in accordance with either of the following conditions:

(1) If the responsible individual is a joint holder of the certificate of registration, not more than four of the children present shall be infants. The total number of children present at any one time who are younger than school age, including infants, shall not exceed eleven.

(2) If the responsible individual is not a joint holder of the certificate of registration, but is at least fourteen years of age, not more than four of the children shall be infants and each child in excess of six children shall be of school age.

3. A registered group child care home may provide care in accordance with this subsection for more than eleven but less than sixteen children for a period of less than two hours or for a period of two hours or more during a day with inclement weather following the cancellation of school classes. The home must have the prior written approval from the parent or guardian of each child present in the home concerning the presence of excess children in the home. In addition, one or more of the following conditions shall apply to each child present in the home in excess of eleven children during a period of inclement weather:

a. The group child care home provides care to the child on a regular basis for periods of less than two hours.

b. If the child was not present in the group child care home, the child would be unattended.

c. The group child care home provides care to a sibling of the child.

4. A person who operates or establishes a child care home and who is a child foster care licensee under chapter 237 shall register with the department under this chapter. For purposes of registration and determination of the maximum number of children who can be provided child care by the child care home, the children receiving child foster care shall be considered the children of the person operating the child care home.

5. If the department has denied or revoked a registration because the applicant or person has continually or repeatedly failed to operate a registered child care facility in compliance with this chapter and rules adopted pursuant to this chapter, the person shall not own or operate a registered facility for a period of six months from the date the registration is denied or revoked. The department shall not act on an application for registration submitted by the applicant or person dur-

ing the six-month period.

2001 Acts, ch 135, §3
Subsection 2, paragraph b amended

237A.3A Registration of child care homes — pilot project.

1. *Pilot project.* The department shall implement a pilot project applying the provisions of this section to registered family or group child care homes located in one county of this state. The provisions of this section shall not apply to unregistered family child care homes located in the pilot project county. The county selected for the pilot project shall be a rural county where there is interest among child care providers and consumers in implementing the pilot project. During the fiscal year beginning July 1, 1999, the department shall implement the pilot project in one county in each of the department's regions where there is interest in implementing the pilot project. In addition, the department may implement the pilot project in one other county in each of the department's regions where there is interest in implementing the pilot project. Commencing with the fiscal year beginning July 1, 2001, the department may implement the pilot project in other counties where there is an interest in implementing the pilot project. If a definition in section 237A.1, a provision in section 237A.3, or an administrative rule adopted under this chapter is in conflict with this section, this section and the rules adopted to implement this section shall apply to the pilot project.

2. *Definition.* For the purposes of this section, unless the context otherwise requires, "child care home" means a person registered under this section to provide child care in a pilot project county.

3. *Registration.*

a. The registration process for a child care home under this section shall be repeated on an annual basis as provided by rule.

b. A person who is a child foster care licensee under chapter 237 must register as a child care home provider in order to operate or establish a child care home in a pilot project county.

c. A person or program in a pilot project county which provides care, supervision, and guidance to a child which is not defined as child care under section 237A.1 may be issued a certificate of registration under this section.

d. (1) Four levels of registration requirements are applicable to registered child care homes in accordance with subsections 10 through 13 and rules adopted to implement this section. The rules shall apply requirements to each level for the amount of space available per child, provider qualifications and training, and other minimum standards.

(2) The rules shall allow a child care home to be registered at level II, III, or IV for which the provider is qualified even though the amount of space required to be available for the maximum

number of children authorized for that level exceeds the actual amount of space available in that child care home. However, the total number of children authorized for the child care home at that level of registration shall be limited by the amount of space available per child.

4. *Number of children.* In determining the number of children cared for at any one time in a child care home, each child present in the child care home shall be considered to be receiving care unless the child is described by one of the following exceptions:

a. The child's parent, guardian, or custodian operates or established the child care home and the child is attending school or the child receives child care full-time on a regular basis from another person.

b. The child has been present in the child care home for more than seventy-two consecutive hours and meets the requirements of paragraph "a" as though the person who operates or established the child care home is the child's parent, guardian, or custodian.

5. *Registration certificate.* The department shall issue a certificate of registration upon receipt of a statement from the child care home or an inspection verifying that the child care home complies with rules adopted by the department. The certificate of registration shall be posted in a conspicuous place in the child care home and shall state the name of the registrant, the registration level of the child care home, the number of children who may be present for care at any one time, and the address of the child care home. In addition, the certificate shall include a check list of registration compliances.

6. *Revocation or denial of registration.* If the department has denied or revoked a certificate of registration because a person has continually or repeatedly failed to operate a registered or licensed child care facility in compliance with this chapter and rules adopted pursuant to this chapter, the person shall not operate or establish a registered child care home for a period of six months from the date the registration or license is denied or revoked. The department shall not act on an application for registration submitted by the person during the six-month period.

7. *Inclement weather exception.* If school classes have been cancelled due to inclement weather, a registered child care home may have additional children present in accordance with the authorization for the registration level of the child care home and subject to all of the following conditions:

a. The child care home has prior written approval from the parent or guardian of each child present in the child care home concerning the presence of additional children in the child care home.

b. The child care home has a responsible individual, age fourteen or older, on duty to assist the

care provider as required for the registration level of the child care home pursuant to subsections 10 through 13.

c. One or more of the following conditions is applicable to each of the additional children present in the child care home:

(1) The child care home provides care to the child on a regular basis for periods of less than two hours.

(2) If the child was not present in the child care home, the child would be unattended.

(3) The child care home regularly provides care to a sibling of the child.

8. *Fire safety.* In consultation with the state fire marshal, the department shall adopt rules relating to the provision of fire extinguishers, smoke detectors, and two exits accessible to children in a registered child care home.

9. *Sick children.* The department shall adopt rules relating to the provision of a separate area for sick children in those child care homes which are registered at levels III and IV.

10. *Level I registration.* All of the following requirements shall apply to a level I registered child care home:

a. Except as otherwise provided in this subsection, not more than six children shall be present at any one time.

b. Not more than three children who are infants shall be present at any one time.

c. In addition to the number of children authorized in paragraph "a", not more than two children who attend school may be present for a period of less than two hours at any one time.

d. Not more than eight children shall be present at any one time when an inclement weather exception is in effect.

11. *Level II registration.* All of the following requirements shall apply to a level II registered child care home:

a. Except as otherwise provided in this subsection, not more than six children shall be present at any one time.

b. Not more than three children who are infants shall be present at any one time.

c. In addition to the number of children authorized in paragraph "a", not more than four children who attend school may be present for a period of more than two hours at any one time.

d. In addition to the number of children authorized in paragraph "a", not more than two children who are receiving care on a part-time basis may be present.

e. Not more than twelve children shall be present at any one time when an inclement weather exception is in effect. However, if more than eight children are present during an inclement weather

exception, the provider shall be assisted by a responsible individual who is at least fourteen years of age.

12. *Level III registration.* All of the following requirements shall apply to a level III registered child care home:

a. Except as otherwise provided in this subsection, not more than six children shall be present at any one time.

b. Not more than three children who are infants shall be present at any one time.

c. In addition to the number of children authorized in paragraph "a", not more than four children who attend school may be present.

d. In addition to the number of children authorized in paragraph "a", not more than two children who are receiving care on a part-time basis may be present.

e. Not more than twelve children shall be present at any one time when an inclement weather exception is in effect.

f. If more than eight children are present at any one time for a period of more than two hours, the provider shall be assisted by a responsible individual who is at least fourteen years of age.

13. *Level IV registration.* All of the following requirements shall apply to a level IV registered child care home:

a. Except as otherwise provided in this subsection, not more than twelve children shall be present at any one time. If more than eight children are present, a second person must be present who meets the individual qualifications for child care home registration established by rule of the department.

b. Not more than four children who are infants shall be present at any one time.

c. In addition to the number of children authorized in paragraph "a", not more than two children who attend school may be present for a period of less than two hours at any one time.

d. In addition to the number of children authorized in paragraph "a", not more than two children who are receiving care on a part-time basis may be present.

e. Not more than sixteen children shall be present at any one time when an inclement weather exception is in effect. If more than eight children are present at any one time during an inclement weather exception, the provider shall be assisted by a responsible individual who is at least eighteen years of age.

2001 Acts, ch 135, §4
Exceptions to child care home requirements during transition period; 99 Acts, ch 192, §37

Reports regarding implementation of expansion of pilot project; proposal for administrative civil penalties; 99 Acts, ch 192, §37

Subsection 1 amended

CHAPTER 239B

FAMILY INVESTMENT PROGRAM

239B.8 Family investment agreements.

The department shall establish a policy regarding the implementation of family investment agreements which limits the period of eligibility for the family investment program based upon the requirements of a family's plan for self-sufficiency. The policy shall require a family's plan to be specified in a family investment agreement between the family and the department. The department shall adopt rules to administer the policy. The components of the policy shall include but are not limited to all of the following:

1. *Participation — exemptions.* A parent living in a home with a child for whom an application for family investment program assistance has been made or for whom the assistance is provided, and all other individual members of the family whose needs are included in the assistance shall be subject to a family investment agreement unless exempt under rules adopted by the department or unless any of the following conditions exists:

a. The individual is less than sixteen years of age and is not a parent.

b. The individual is sixteen through eighteen years of age, is not a parent, and is attending elementary or secondary school, or the equivalent level of vocational or technical school, on a full-time basis.

c. The individual is not a United States citizen and is not a qualified alien as defined in 8 U.S.C. § 1641.

2. *Agreement options.* A family investment agreement shall require an individual to participate in one or more of the options enumerated in this subsection. An individual's level of participation in one or more of the options shall be equivalent to the level of commitment required for full-time employment or shall be significant so as to move the individual's level of participation toward that level. The department shall adopt rules for each option defining requirements and establishing assistance provisions for child care, transportation, and other support services. The options shall include but are not limited to all of the following:

a. Full-time or part-time employment.

b. Active job search.

c. Participation in the JOBS program.

d. Participation in other education or training programming.

e. Participation in a family development and self-sufficiency grant program under section 217.12 or other family development program.

f. Work experience placement.

g. Unpaid community service. Community service shall be authorized in any nonprofit associ-

ation which has been determined under section 501(c)(3) of the Internal Revenue Code to be exempt from taxation or in any government agency. Upon request, the department shall provide a listing of potential community service placements to an individual. However, an individual shall locate the individual's own placement and perform the number of hours required by the agreement. The individual shall file a monthly report with the department which is signed by the director of the community service placement verifying the community service hours performed by the individual during that month. The department shall develop a form for this purpose.

h. Any other arrangement which would strengthen the individual's ability to be a better parent, including but not limited to participation in a parenting education program. Parental leave from employment shall be authorized for a parent of a child who is less than three months of age. An opportunity to participate in a parental education program shall also be authorized for such a parent. An individual who is not a parent who is nineteen years of age or younger or a parent of a child who is less than three months of age shall simultaneously participate in at least one other option enumerated in this subsection.

i. Participation in a safety plan to address or prevent family or domestic violence. The safety plan may include a temporary waiver period from required participation in the JOBS program or other employment-related activities, as appropriate for the situation of the applicant or participant. All applicants and participants shall be informed regarding the existence of this option. Participation in this option shall be subject to review in accordance with administrative rule.

3. *Limited benefit plan.* If a participant fails to comply with the provisions of the participant's family investment agreement during the period of the agreement, the limited benefit plan provisions of section 239B.9 shall apply.

4. *Completion of agreement.*

a. Upon the completion of the terms of the agreement, family investment program assistance to a participant family covered by the agreement shall cease or be reduced in accordance with rules.

b. However, if the period in which a participant family is without cash assistance is one month or less and the participant family has not become exempt from JOBS program participation at the time the participant family reapplies for cash assistance, the participant family's family investment agreement shall be reinstated at the time the participant family reapplies. The reinstated agreement may be revised to accommodate

changed circumstances present at the time of reapplication.

c. The department shall adopt rules to administer this subsection and to determine when a family is eligible to reenter the family investment program.

5. *Contracts.* The department may contract with the department of workforce development, department of economic development, or any other entity to provide services relating to a family investment agreement.

6. *Confidential information disclosure.* The department may disclose confidential information described in section 217.30, subsection 1, to other state agencies or to any other entity which is not subject to the provisions of chapter 17A and is providing services to a participant family who is subject to a family investment agreement, if necessary in order for the participant family to receive the services. The department shall adopt rules establishing standards for disclosure of confidential information if disclosure is necessary in order for a participant to receive services.

7. *Postsecondary education.* For family investment agreements entered into on or after July 1, 1996, the maximum allowable time period for supported postsecondary education is limited to a total of twenty-four months. The twenty-four-month allowance shall only be available for a period of forty-eight consecutive months.

2001 Acts, ch 128, §1; 2001 Acts, ch 191, §41

Subsection 7 applies to family investment agreements entered into on or after July 1, 2001; department of human services to amend prior agreements to apply maximum support allowance limitations where needed; 2001 Acts, ch 128, §2

Subsection 1 amended

NEW subsection 7

239B.14 Fraudulent practices — recovery of overpayments.

1. An individual who obtains, or attempts to obtain, or aids or abets an individual to obtain, by means of a willfully false statement or representation, by knowingly failing to disclose a material fact, or by impersonation, or any fraudulent device, any assistance or other benefits under this chapter to which the individual is not entitled, commits a fraudulent practice.

2. An individual who commits a fraudulent practice under this section is personally liable for the amount of assistance or other benefits fraudulently obtained. The amount of the assistance or other benefits may be recovered from the offender or the offender's estate in an action brought or by claim filed in the name of the state and the recovered funds shall be deposited in the family investment program account. The action or claim filed in the name of the state shall not be considered an election of remedies to the exclusion of other remedies.

3. The department shall adopt rules pursuant to chapter 17A as necessary to recover overpayments of assistance and benefits provided under this chapter. The recovery methods shall include but are not limited to reducing the amount of assistance or benefits provided.

Fraudulent practices; see §714.8 et seq.

Use of recovered moneys generated through fraud and recoupment activities for additional fraud and recoupment activities; 2000 Acts, ch 1228, §34; 2001 Acts, ch 191, §33

Section not amended; footnote revised

CHAPTER 241

DISPLACED HOME MAKERS

241.3 Department powers and duties.

1. The director shall do all of the following:

a. Designate and award grants for existing and pilot programs, pursuant to section 241.2, to provide services to displaced homemakers.

b. Designate an existing department staff member to perform the duties set forth in section 241.6.

c. Design and implement a uniform method of collecting data on displaced homemakers receiving services under this chapter and of evaluating funded programs.

2. The department shall consult and cooperate with the department of workforce development, the United States commissioner of social security administration, the division of the status of

women of the department of human rights, the department of education, and other persons in the executive branch of the state government as the department considers appropriate to facilitate the coordination of multipurpose service programs established under this chapter with existing programs of a similar nature.

3. The director, in carrying out the provisions of this chapter, may accept, use, and dispose of contributions of money, services, and property made available to the department by an agency or department of the state or federal government, or a private agency or individual.

2001 Acts, ch 61, §16

Subsection 2 amended

CHAPTER 249A

MEDICAL ASSISTANCE

Obligation to pay for costs of service rendered prior to July 1, 1997; disputed billings; 2001 Acts, ch 155, §12, 13
 Modified price-based case-mix reimbursement for nursing facilities; three-year phase-in period; 2001 Acts, ch 192, §4
 Maximum allowable cost list for prescription drugs; FY 2001 reimbursement rates for medical assistance, state supplementary assistance, and social service providers; 2001 Acts, ch 191, §31

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 supplemental security income or who would be eligible for federal supplemental security income if living in their own home.

b. Is an individual who is eligible for the family investment program 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 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 cash assistance under the family investment program, 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, 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.

g. (1) Is a child who is one through five years of age as prescribed by the federal Omnibus Bud-

get 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 who has attained six years of age but has not attained nineteen years of age, 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.

h. Is a woman who, while pregnant, meets eligibility requirements for assistance under the federal Social Security Act, section 1902(l), and continues to meet the requirements except for income. The woman is eligible to receive assistance until sixty days after the date pregnancy ends.

i. Is a pregnant woman who is determined to be presumptively eligible by a health care provider qualified under the federal Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-509, § 9407. The woman is eligible for ambulatory prenatal care assistance 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 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 two 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.

l. Is an infant whose income is not more than two hundred percent of the federal poverty level, as defined by the most recently revised income guidelines published by the United States department of health and human services.

m. Is a child for whom adoption assistance or foster care maintenance payments are paid under Title IV-E of the federal Social Security Act.

n. Is an individual or family who is ineligible for the family investment program because of requirements that do not apply under Title XIX of the federal Social Security Act.

o. 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.

p. 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.

q. 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.

r. Is an individual with a disability, 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.

s. Is an individual who is no longer eligible for the family investment program due to earned income. The department shall provide transitional medical assistance to the individual for the maximum period allowed for federal financial participation under federal law.

t. Is an individual who is no longer eligible for the family investment program due to the receipt of child or spousal support. The department shall provide transitional medical assistance to the individual for the maximum period allowed for federal financial participation under federal law.

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 5 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. As allowed under 42 U.S.C. § 1396a(10)(A)(ii)(XIII), individuals with disabilities, who are less than sixty-five years of age, who are members of families whose income is less than two hundred fifty percent of the most recently revised official poverty line published by the federal office of management and budget for the family, who have earned income and who are eligible for medical assistance or additional medical assistance under this section if earnings are disregarded. As allowed by 42 U.S.C. § 1396a(r)(2), unearned income shall also be disregarded in determining whether an individual is eligible for assistance under this paragraph. For the purposes of determining the amount of an individual's resources under this paragraph and as allowed by 42 U.S.C. § 1396a(r)(2), a maximum of ten thousand dollars of available resources shall be disregarded and any additional resources held in a retirement account, in a medical savings account, or in any other account approved under rules adopted by the department shall also be disregarded. Individuals eligible for assistance under this paragraph, whose individual income exceeds one hundred fifty percent of the official poverty line published by the federal office of management and budget for an individual, shall pay a premium. The amount of the premium shall be based on a sliding fee schedule adopted by rule of the department and shall be based on a percentage of the individual's income. The maximum premium payable by an individual whose income exceeds one hundred fifty percent of the official poverty line shall be commensurate with premiums charged for private group health insurance in this state. This paragraph shall be implemented no later than March 1, 2000.

b. As provided under the federal Breast and Cervical Cancer Prevention and Treatment Act of 2000, Pub. L. No. 106-354, women who meet all of the following criteria:

(1) Are not described in 42 U.S.C. § 1396a(10)(A)(i).

(2) Have not attained age sixty-five.

(3) Have been screened for breast and cervical cancer under the United States centers for disease control and prevention breast and cervical cancer early detection program established under 42 U.S.C. § 300k et seq., in accordance with the requirements of 42 U.S.C. § 300n, and need treatment for breast or cervical cancer. A woman is considered screened for breast and cervical cancer under this subparagraph if the woman is screened by any provider or entity, and the state grantee of the United States centers for disease control and prevention funds under Title XV of the federal Public Health Services Act has elected to include screening activities by that provider or entity as screening activities pursuant to Title XV of the federal

Public Health Services Act. This screening includes but is not limited to breast or cervical cancer screenings or related diagnostic services provided by family planning or community health centers and breast cancer screenings funded by the Susan G. Komen foundation which are provided to women who meet the eligibility requirements established by the state grantee of the United States centers for disease control and prevention funds under Title XV of the federal Public Health Services Act.

(4) Are not otherwise covered under creditable coverage as defined in 42 U.S.C. § 300gg(c).

A woman who meets the criteria of this paragraph shall be presumptively eligible for medical assistance.

c. 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 supplemental 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.

d. 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.

e. 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, or who are sixty-five years of age or older and who meet the conditions for eligibility in paragraph "a" of this subsection.

f. Individuals and families whose incomes and resources are such that they are eligible for federal supplemental security income or the family investment program, but who are not actually receiving such public assistance.

g. 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.

h. 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.

i. 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.

j. 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 supplemental 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 "i" 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.

5A. In determining eligibility for children under subsection 1, paragraphs "b", "f", "g", "j", "k", "n", and "s"; subsection 2, paragraphs "c", "e", "f", "h", and "i"; and subsection 5, paragraph "b", all resources of the family, other than monthly income, shall be disregarded.

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)(iii), as codified in 42 U.S.C. § 1396a(a)(10)(E)(iii).

d. An additional specified low-income Medicare beneficiary as described under Title XIX of the federal Social Security Act, section 1902(a)(10)(E)(iv)(I), as codified in 42 U.S.C. § 1396a(a)(10)(E)(iv)(I).

e. An additional specified low-income Medicare beneficiary described under Title XIX of the federal Social Security Act, section 1902(a)(10)(E)(iv)(II), as codified in 42 U.S.C. § 1396a(a)(10)(E)(iv)(II).

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).

c. A disclaimer of any property, interest, or right pursuant to section 633.704 constitutes a transfer of assets for the purpose of determining eligibility for medical assistance in an amount equal to the value of the property, interest, or right disclaimed.

d. Failure of a surviving spouse to take against a will pursuant to chapter 633, division V, constitutes a transfer of assets for the purpose of determining eligibility for medical assistance to the extent that the value received by taking against the will would have exceeded the value of the inheritance received under the will.

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.

2001 Acts, ch 184, §9

Increase of medical assistance eligibility income limit for pregnant women and infants; 2000 Acts, ch 1228, §8; 2001 Acts, ch 191, §45, 53

Subsection 2, NEW paragraph b and former paragraphs b – i redesignated as c – j

249A.4 Duties of director.

The director shall be responsible for the effective and impartial administration of this chapter and shall, in accordance with the standards and priorities established by this chapter, by applicable federal law, by the regulations and directives issued pursuant to federal law, by applicable court orders, and by the state plan approved in accordance with federal law, make rules, establish policies, and prescribe procedures to implement this chapter. Without limiting the generality of the foregoing delegation of authority, the director is hereby specifically empowered and directed to:

1. Determine the greatest amount, duration, and scope of assistance which may be provided, and the broadest range of eligible individuals to whom assistance may effectively be provided, under this chapter within the limitations of available funds. In so doing, the director shall at least every six months evaluate the scope of the program currently being provided under this chapter, project the probable cost of continuing a like program, and compare the probable cost with the remaining balance of the state appropriation made for payment of assistance under this chapter during the current appropriation period. After each evaluation of the scope of the program, the director shall report to the general assembly through the legislative council or in another manner as the general assembly may by resolution direct.

2. Reserved.

3. Have authority to provide for payment under this chapter of assistance rendered to any applicant prior to the date the application is filed.

4. Have authority to contract with any corporation authorized to engage in this state in insuring groups or individuals for all or part of the cost of medical, hospital, or other health care or with any corporation maintaining and operating a medical, hospital, or health service prepayment plan under the provisions of chapter 514 or with any health maintenance organization authorized to operate in this state, for any or all of the benefits to which any recipients are entitled under this chapter to be provided by such corporation or health maintenance organization on a prepaid individual or group basis.

5. May, to the extent possible, contract with a private organization or organizations whereby such organization will handle the processing of and the payment of claims for services rendered under the provisions of this chapter and under such rules and regulations as shall be promulgated by such department. The state department may give due consideration to the advantages of contracting with any organization which may be

serving in Iowa as “intermediary” or “carrier” under Title XVIII of the federal Social Security Act, as amended.

6. Shall cooperate with any agency of the state or federal government in any manner as may be necessary to qualify for federal aid and assistance for medical assistance in conformity with the provisions of chapter 249, this chapter and Titles XVI and XIX of the federal Social Security Act, as amended.

7. Shall provide for the professional freedom of those licensed practitioners who determine the need for or provide medical care and services, and shall provide freedom of choice to recipients to select the provider of care and services, except when the recipient is eligible for participation in a health maintenance organization or prepaid health plan which limits provider selection and which is approved by the department. However, this shall not limit the freedom of choice to recipients to select providers in instances where such provider services are eligible for reimbursement under the medical assistance program but are not provided under the health maintenance organization or under the prepaid health plan, or where the recipient has an already established program of specialized medical care with a particular provider. The department may also restrict the recipient’s selection of providers to control the individual recipient’s overuse of care and services, provided the department can document this overuse. The department shall promulgate rules for determining the overuse of services, including rights of appeal by the recipient.

8. Shall advise and consult at least semiannually with a council composed of the presidents of the following organizations, or a president’s representative who is a member of the organization represented by the president: the Iowa medical society, the Iowa osteopathic medical association, the Iowa academy of family physicians, the Iowa chapter of the American academy of pediatrics, the Iowa physical therapy association, the Iowa dental association, the Iowa nurses association, the Iowa pharmacy association, the Iowa podiatric medical society, the Iowa optometric association, the Iowa association of community providers, the Iowa psychological association, the Iowa psychiatric society, the Iowa chapter of the national association of social workers, the Iowa hospital association, the Iowa association of rural health clinics, the opticians’ association of Iowa, inc., the Iowa association of hearing health professionals, the Iowa speech and hearing association, the Iowa health care association, the Iowa association for home care, the Iowa council of health care centers, the Iowa physician assistant society, the Iowa association of nurse practitioners, the Iowa occupational therapy association, the Iowa association of homes and services for the aging, the ARC of Iowa which was formerly known as the association for re-

tarded citizens of Iowa, the alliance for the mentally ill of Iowa, Iowa state association of counties, and the governor's developmental disabilities council, together with one person designated by the Iowa chiropractic society; one state representative from each of the two major political parties appointed by the speaker of the house, one state senator from each of the two major political parties appointed by the president of the senate, after consultation with the majority leader and the minority leader of the senate, each for a term of two years; four public representatives, appointed by the governor for staggered terms of two years each, none of whom shall be members of, or practitioners of, or have a pecuniary interest in any of the professions or businesses represented by any of the several professional groups and associations specifically represented on the council under this subsection, and at least one of whom shall be a recipient of medical assistance; the director of public health, or a representative designated by the director; the dean of Des Moines university — osteopathic medical center, or a representative designated by the dean; and the dean of the university of Iowa college of medicine, or a representative designated by the dean.

For each council meeting, other than those held during the time the general assembly is in session, each legislative member of the council shall be reimbursed for actual traveling and other necessary expenses and shall receive a per diem as specified in section 7E.6 for each day in attendance, as shall the public representatives, regardless of whether the general assembly is in session.

The director shall consider the advice and consultation offered by the council in the director's preparation of medical assistance budget recommendations.

9. Adopt rules pursuant to chapter 17A in determining the method and level of reimbursement for all medical and health services referred to in section 249A.2, subsection 1 or 7, after considering all of the following:

a. The promotion of efficient and cost-effective delivery of medical and health services.

b. Compliance with federal law and regulations.

c. The level of state and federal appropriations for medical assistance.

d. Reimbursement at a level as near as possible to actual costs and charges after priority is given to the considerations in paragraphs "a", "b", and "c".

10. Shall provide an opportunity for a fair hearing before the department of inspections and appeals to an individual whose claim for medical assistance under this chapter is denied or is not acted upon with reasonable promptness. Upon completion of a hearing, the department of inspections and appeals shall issue a decision which is

subject to review by the department of human services.

11. In determining the medical assistance eligibility of a pregnant woman, infant, or child under the federal Social Security Act, § 1902(l), resources which are used as tools of the trade shall not be considered.

12. In determining the medical assistance eligibility of a pregnant woman, infant, or child under the federal Social Security Act, § 1902(l), or pursuant to section 249A.3, subsection 2, paragraph "i", the department shall establish resource standards and exclusions not less generous than the resource standards and exclusions adopted pursuant to section 255A.5, if in compliance with federal laws and regulations.

13. In implementing subsection 9, relating to reimbursement for medical and health services under this chapter, when a selected out-of-state acute care hospital facility is involved, a contractual arrangement may be developed with the out-of-state facility that is in accordance with the requirements of Titles XVIII and XIX of the federal Social Security Act. The contractual arrangement is not subject to other reimbursement standards, policies, and rate setting procedures required under this chapter.

14. A medical assistance copayment shall only be applied to those services and products specified in administrative rules of the department in effect on February 1, 1991, which under federal medical assistance requirements, are provided at the option of the state.

15. Establish appropriate reimbursement rates for community mental health centers that are accredited by the mental health and developmental disabilities commission. The reimbursement rates shall be phased in over the three-year period beginning July 1, 1998, and ending June 30, 2001.

Judicial review of the decisions of the department of human services may be sought in accordance with chapter 17A. If a petition for judicial review is filed, the department of human services shall furnish the petitioner with a copy of the application and all supporting papers, a transcript of the testimony taken at the hearing, if any, and a copy of its decision.

2001 Acts, ch 24, §65, 74; 2001 Acts, ch 74, §17
Reimbursement for family and pediatric nurse practitioners; emergency rules; 2000 Acts, ch 1228, §8; 2001 Acts, ch 191, §45, 53
Pharmaceutical case management study; reports; emergency rules; 2000 Acts, ch 1228, §9; 2001 Acts, ch 191, §46, 53
Subsection 8, unnumbered paragraph 1 amended

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 persons with mental retardation.

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's goal for the maximum time period for submission of a claim to a county is not more than sixty days following the submission of the claim by the provider of the service to the department. The department's goal for completion and crediting of a county for cost settlement for the actual costs of a home and community-based waiver service is within two hundred seventy days of the close of a fiscal year for which cost reports are due from providers. 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 persons with mental retardation 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.

5. *a.* The state-county management committee shall recommend to the department the actions necessary to assist in the transition of individuals being served in an intermediate care facility for persons with mental retardation, who are appropriate for the transition, to services funded under a medical assistance waiver for home and community-based services for persons with mental retardation in a manner which maximizes the use of existing public and private facilities. The actions may include but are not limited to submitting any of the following or a combination of any of the following as a request for a revision of the med-

ical assistance waiver for home and community-based services for persons with mental retardation in effect as of June 30, 1996:

(1) Allow for the transition of intermediate care facilities for persons with mental retardation licensed under chapter 135C as of June 30, 1996, to services funded under the medical assistance waiver for home and community-based services for persons with mental retardation. The request shall be for inclusion of additional persons under the waiver associated with the transition.

(2) Allow for reimbursement under the waiver for day program or other service costs.

(3) Allow for exception provisions in which an intermediate care facility for persons with mental retardation which does not meet size and other facility-related requirements under the waiver in effect on June 30, 1996, may convert to a waiver service for a set period of time such as five years. Following the set period of time, the facility would be subject to the waiver requirements applicable to services which were not operating under the exception provisions.

b. In implementing the provisions of this subsection, the state-county management committee shall consult with other states. The waiver revision request or other action necessary to assist in the transition of service provision from intermediate care facilities for persons with mental retardation to alternative programs shall be implemented by the department in a manner that can appropriately meet the needs of individuals at an overall lower cost to counties, the federal government, and the state. In addition, the department shall take into consideration significant federal changes to the medical assistance program in formulating the department's actions under this subsection. The department shall consult with the state-county management committee in adopting rules for oversight of facilities converted pursuant to this subsection. A transition approach described in paragraph "a" may be modified as necessary to obtain federal waiver approval. The department shall report on or before January 2, 1997, to the general assembly regarding its actions under this subsection and any federal response, and shall submit an update upon receiving a federal response to the waiver request or other action taken which requires a federal response. If implementation of any of the provisions of this subsection does not require a federal waiver, the department shall implement the provisions in the fiscal year beginning July 1, 1996.

Obligation to pay for costs of service rendered prior to July 1, 1997; disputed billings; see 2001 Acts, ch 155, §12, 13
Section not amended; footnote added

249A.26 State and county participation in funding for services to persons with disabilities.

1. The state shall pay for one hundred percent of the nonfederal share of the services paid for un-

der any prepaid mental health services plan for medical assistance implemented by the department as authorized by law.

2. The county of legal settlement shall pay for fifty percent of the nonfederal share of the cost of case management provided to adults, day treatment, and partial hospitalization provided under the medical assistance program for persons with mental retardation, a developmental disability, or chronic mental illness. For purposes of this section, persons with mental disorders resulting from Alzheimer's disease or substance abuse shall not be considered chronically mentally ill. To the maximum extent allowed under federal law and regulations, the department shall consult with and inform a county of legal settlement's single entry point process, as defined in section 331.440, regarding the necessity for and the provision of any service for which the county is required to provide

reimbursement under this subsection.

3. To the maximum extent allowed under federal law and regulations, a person with mental illness or mental retardation shall not be eligible for any service which is funded in whole or in part by a county share of the nonfederal portion of medical assistance funds unless the person is referred through the single entry point process, as defined in section 331.440. However, to the extent federal law allows referral of a medical assistance recipient to a service without approval of the single entry point process, the county of legal settlement shall be billed for the nonfederal share of costs for any adult person for whom the county would otherwise be responsible.

Obligation to pay for costs of service rendered prior to July 1, 1997; disputed billings; see 2001 Acts, ch 155, §12, 13
Section not amended; footnote added

CHAPTER 249H

SENIOR LIVING PROGRAM

249H.2 Legislative findings — goal.

1. The general assembly finds that:

a. The preservation, improvement, and coordination of the health care infrastructure of Iowa are critical to the health and safety of Iowans.

b. An increasing number of seniors and persons with disabilities in the state requires long-term care services provided outside of a medical institution.

c. A full array of long-term care services is necessary to provide cost-effective and appropriate services to the varied population of health care consumers.

d. The supported development of long-term care alternatives, including assisted-living facility services, adult day services, and home and community-based services, is critical in areas of the state where such alternatives otherwise are not likely to be developed.

e. Cost containment in the delivery of health care is necessary to improve services and access for all Iowans.

f. Grants are necessary to cover the expenditures related to the development of alternative health care services. Development of these alternatives will improve access to and delivery of long-term care services to underserved individuals or in underserved areas, which will in turn contain or reduce the cost and improve the quality of health care services.

g. A continuing source of funding is necessary

to enhance the state's ability to meet the rising demand of seniors with low and moderate incomes in obtaining an appropriate variety of long-term care services.

2. The goal of this program is to create a comprehensive long-term care system that is consumer-directed, provides a balance between the alternatives of institutionally and noninstitutionally provided services, and contributes to the quality of the lives of Iowans.

2001 Acts, ch 64, §8
Subsection 1, paragraph d amended

249H.6 Nursing facility conversion and long-term care services development grants.

1. The department of human services, at the direction of the senior living coordinating unit, may use moneys appropriated to the department from the senior living trust fund to award grants to any of the following:

a. A licensed nursing facility that has been an approved provider under the medical assistance program for the two-year period prior to application for the grant. The grant awarded may be used to convert all or a portion of the licensed nursing facility to a certified assisted-living program and may be used for capital or one-time expenditures, including but not limited to start-up expenses, training expenses, and operating losses for the first year of operation following conversion associated with the nursing facility conversion.

b. A long-term care provider or a licensed nursing facility that has been an approved provider under the medical assistance program for the two-year period prior to application for the grant or a provider that will meet applicable medical assistance provider requirements as specified in subsection 2, paragraph “*c*” or “*d*”. The grant awarded may be used for capital or one-time expenditures, including but not limited to start-up expenses, training expenses, and operating losses for the first year of operation for long-term care service development.

2. A grant shall be awarded only to an applicant who meets all of the following criteria, as applicable to the type of grant:

a. The applicant is a long-term care provider or a nursing facility that is located in an area determined by the senior living coordinating unit to be underserved with respect to a particular long-term care alternative service, and that has demonstrated the ability or potential to provide quality long-term care alternative services.

b. The applicant is able to provide a minimum matching contribution of twenty percent of the total cost of any conversion, remodeling, or construction.

c. The applicant is applying for a nursing facility conversion grant and is able to demonstrate all of the following:

(1) Conversion of the nursing facility or a distinct portion of the nursing facility to an assisted-living program is projected to offer efficient and economical care to individuals requiring long-term care services in the service area.

(2) Assisted-living services are otherwise not likely to be available in the area for individuals eligible for services under the medical assistance program.

(3) The resulting reduction in the availability of nursing facility services is not projected to cause undue hardship on those individuals requiring nursing facility services for a period of at least ten years.

(4) Public support following a community-based assessment.

(5) Conversion of the nursing facility is projected to result in a lower per client reimbursement cost to the grant applicant under the medical assistance program.

d. The applicant is applying for a long-term care service development grant and is able to demonstrate all of the following:

(1) Long-term care service development is projected to offer efficient and economical care to individuals requiring long-term care services in the service area.

(2) The proposed long-term care alternative is otherwise not likely to be available in the area for individuals eligible for services under the medical assistance program.

(3) Public support following a community-based assessment.

e. The applicant agrees to do all of the following as applicable to the type of grant:

(1) Participate and maintain a minimum medical assistance client base participation rate of forty percent, subject to the demand for participation by individuals eligible for medical assistance.

(2) Provide a service delivery package that is affordable for those individuals eligible for services under the medical assistance home and community-based services waiver program.

(3) Provide a refund to the senior living trust fund, on an amortized basis, in the amount of the grant, if the applicant or the applicant's successor in interest ceases to operate an affordable long-term care alternative within the first ten-year period of operation following the awarding of the grant or if the applicant or the applicant's successor in interest fails to maintain a participation rate of forty percent in accordance with subparagraph (1).

3. The department of human services shall adopt rules in consultation with the senior living coordinating unit, pursuant to chapter 17A, to provide all of the following:

a. An application process and eligibility criteria for the awarding of grants. The eligibility criteria shall include but are not limited to the applicant's demonstration of an affordable service package, the applicant's use of the funds for allowable costs, and the applicant's ability to refund the funds if required under subsection 2, paragraph “*e*”, subparagraph (3). The primary eligibility criterion used shall be the applicant's potential impact on the overall goal of moving toward a balanced, comprehensive, affordable, high-quality, long-term care system.

b. Criteria to be utilized in determining the amount of the grant awarded.

c. Weighted criteria to be utilized in prioritizing the awarding of grants to individual grantees during a grant cycle. Greater weight shall be given to the applicant's demonstration of potential reduction of nursing facility beds, the applicant's ability to meet demonstrated community need, and the established history of the applicant in providing quality long-term care services.

d. Policies and procedures for certification of the matching funds required of applicants under subsection 2, paragraph “*b*”.

e. Other procedures the department of human services deems necessary for the proper administration of this section, including but not limited to the submission of progress reports on a bimonthly basis to the senior living coordinating unit.

4. The department of human services shall adopt rules to ensure that a nursing facility that receives a nursing facility conversion grant allocates costs in an equitable manner.

5. In addition to the types of grants described in subsection 1, the department of human services, at the direction of the senior living coordinating unit, may also use moneys appropriated to

the department from the senior living trust fund to award grants, of not more than one hundred thousand dollars per grant, to licensed nursing facilities that are awarded nursing facility conversion grants and agree, as part of the nursing facility conversion, to also provide adult day services, child care for children with special needs, safe shelter for victims of dependent adult abuse, or respite care.

6. The department of human services shall establish a calendar for receiving and evaluating applications and for awarding of grants.

7. *a.* The department of human services shall develop a cost report to be completed by a grantee which includes, but is not limited to, revenue, costs, loans undertaken by the grantee, fixed assets of the grantee, a balance sheet, and a profit and loss statement.

b. Grantees shall submit, annually, completed cost reports to the department of human services regarding the project for a period of ten years following the date of initial operation of the grantee's long-term care alternative.

8. The department of human services, in consultation with the department of elder affairs, shall provide annual reports to the governor and the general assembly concerning grants awarded. The annual report shall include the total number of applicants and approved applicants, an overview of the various grants awarded, and detailed reports of the cost of each project funded by a grant and information submitted by the approved applicant.

9. For the purpose of this section, "*underserved*" means areas in which four and four-tenths percent of the number of individuals sixty-five years of age and older is not greater than the number of currently licensed nursing facility beds and certified assisted-living units. In addition, the department, in determining if an area is underserved, may consider additional information gathered through the department's own research or submitted by an applicant, including but not limited to any of the following:

a. Availability of and access to long-term care alternatives relative to individuals eligible for medical assistance.

b. The current number of seniors and persons with disabilities and the projected number of these individuals.

c. The current number of seniors and persons with disabilities requiring professional nursing care and the projected number of these individuals.

d. The current availability of long-term care alternatives and any known changes in the availability of such alternatives.

10. This section does not create an entitlement to any funds available for grants under this section, and the department of human services may only award grants to the extent funds are available and within its discretion, to the extent ap-

plications are approved.

11. In addition to any other remedies provided by law, the department of human services may recoup any grant funding previously awarded and disbursed to a grantee or the grantee's successor in interest and may reduce the amount of any grant awarded, but not yet disbursed, to a grantee or the grantee's successor in interest, by the amount of any refund owed by a grantee or the grantee's successor in interest pursuant to subsection 2, paragraph "e", subparagraph (3).

12. The senior living coordinating unit shall review projects that receive grants under this section to ensure that the goal to provide alternatives to nursing facility care is being met and that an adequate number of nursing facility services remains to meet the needs of Iowans.

2001 Acts, ch 64, §9; 2001 Acts, ch 192, §7

For future repeal of this section, see §249H.11

Legislative intent regarding certification of programs established through nursing facility conversion grants; use of nursing facility conversion grant funds, service delivery package, medical assistance program reimbursement; 2001 Acts, ch 192, §3, 5

Subsection 1, paragraphs a and b amended

Subsection 5 amended

249H.7 Home and community-based services for seniors.

1. Beginning October 1, 2000, the department of elder affairs, in consultation with the senior living coordinating unit, shall use funds appropriated from the senior living trust fund for activities related to the design, maintenance, or expansion of home and community-based services for seniors, including but not limited to adult day services, personal care, respite, homemaker, chore, and transportation services designed to promote the independence of and to delay the use of institutional care by seniors with low and moderate incomes. At any time that moneys are appropriated, the department of elder affairs, in consultation with the senior living coordinating unit, shall disburse the funds to the area agencies on aging.

2. The department of elder affairs shall adopt rules, in consultation with the senior living coordinating unit and the area agencies on aging, pursuant to chapter 17A, to provide all of the following:

a. (1) The criteria and process for disbursement of funds, appropriated in accordance with subsection 1, to area agencies on aging.

(2) The criteria shall include, at a minimum, all of the following:

(a) A distribution formula that triple weights all of the following:

(i) Individuals seventy-five years of age and older.

(ii) Individuals aged sixty and older who are members of a racial minority.

(iii) Individuals sixty years of age and older who reside in rural areas as defined in the federal Older Americans Act.

(iv) Individuals who are sixty years of age and older who have incomes at or below the poverty

level as defined in the federal Older Americans Act.

(b) A distribution formula that single weights individuals sixty years of age and older who do not meet the criteria specified in subparagraph subdivision (a).

b. The criteria for long-term care providers to receive funding as subcontractors of the area agencies on aging.

c. Other procedures the department of elder affairs deems necessary for the proper administration of this section, including but not limited to the submission of progress reports, on a bimonthly basis, to the senior living coordinating unit.

3. This section does not create an entitlement to any funds available for disbursement under this section and the department of elder affairs may only disburse moneys to the extent funds are available and, within its discretion, to the extent requests for funding are approved.

4. Long-term care providers that receive funding under this section shall submit annual reports to the appropriate area agency on aging. The department of elder affairs shall develop the report to be submitted, which shall include, but is not limited to, units of service provided, the number of service recipients, costs, and the number of units of service identified as necessitated but not provided.

5. The department of elder affairs, in cooperation with the department of human services, shall provide annual reports to the governor and the general assembly concerning the impact of moneys disbursed under this section on the availability of long-term care services in Iowa. The reports shall include the types of services funded, the outcome of those services, and the number of individuals receiving those services.

2001 Acts, ch 64, §10
Subsection 1 amended

CHAPTER 249I

HOSPITAL TRUST FUND

Printed in Addendum

CHAPTER 251

EMERGENCY RELIEF ADMINISTRATION

Printed in Addendum

CHAPTER 252

SUPPORT OF THE POOR

Printed in Addendum

CHAPTER 252B

CHILD SUPPORT RECOVERY

252B.5 Services of unit.

The child support recovery unit shall provide the following services:

1. Assistance in the location of an absent parent or any other person who has an obligation to support the child of the resident parent.

2. Aid in establishing paternity and securing a court or administrative order for support pursuant to chapter 252A, 252C, 252F, or 600B, or any other chapter providing for the establishment of paternity or support.

3. Aid in enforcing through court or administrative proceedings an existing court order for support issued pursuant to chapter 252A, 252C,

252F, 598, or 600B, or any other chapter under which child or medical support is granted. The director may enter into a contract with a private collection agency to collect support payments for cases which have been identified by the department as difficult collection cases if the department determines that this form of collection is more cost-effective than departmental collection methods. The department shall utilize, to the maximum extent possible, every available automated process to collect support payments prior to referral of a case to a private collection agency. A private collection agency with whom the department enters a contract under this subsection shall com-

ply with state and federal confidentiality requirements and debt collection laws. The director may use a portion of the state share of funds collected through this means to pay the costs of any contract authorized under this subsection.

4. Assistance to set off against a debtor's income tax refund or rebate any support debt, which is assigned to the department of human services or which the child support recovery unit is attempting to collect on behalf of any individual not eligible as a public assistance recipient, 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. Unless the periodic payment plan provisions for a retroactive modification pursuant to section 598.21, subsection 8, apply, the entire amount of a judgment for accrued support, notwithstanding compliance with a periodic payment plan or regardless of the date of entry of the judgment, is due and owing as of the date of entry of the judgment and is delinquent for the purposes of setoff, including for setoff against a debtor's federal income tax refund or other federal nontax payment. The department of human services shall adopt rules pursuant to chapter 17A necessary to assist the department of revenue and finance in the implementation of the child support setoff as established under section 421.17, subsection 21.

5. Determine periodically whether an individual receiving unemployment compensation benefits under chapter 96 owes a support obligation which is being enforced by the unit, and enforce the support obligation through court or administrative proceedings to have specified amounts withheld from the individual's unemployment compensation benefits.

6. Assistance in obtaining medical support as defined in chapter 252E.

7. At the request of either parent who is subject to the order of support or upon its own initiation, review the amount of the support award in accordance with the guidelines established pursuant to section 598.21, subsection 4, and Title IV-D of the federal Social Security Act, as amended, and take action to initiate modification proceedings if the criteria established pursuant to this section are met. However, a review of a support award is not required if the child support recovery unit determines that such a review would not be in the best interest of the child and neither parent has requested such review.

The department shall adopt rules no later than October 13, 1990, setting forth the process for review of requests for modification of support obligations and the criteria and process for taking action to initiate modification proceedings.

8. *a.* Assistance, in consultation with the department of revenue and finance, in identifying and taking action against self-employed individuals as identified by the following conditions:

(1) The individual owes support pursuant to a court or administrative order being enforced by the unit and is delinquent in an amount equal to or greater than the support obligation amount assessed for one month.

(2) The individual has filed a state income tax return in the preceding twelve months.

(3) The individual has no reported tax withholding amount on the most recent state income tax return.

(4) The individual has failed to enter into or comply with a formalized repayment plan with the unit.

(5) The individual has failed to make either all current support payments in accordance with the court or administrative order or to make payments against any delinquency in each of the preceding twelve months.

b. Notwithstanding section 252B.9, the unit may forward information to the department of revenue and finance as necessary to implement this subsection, including but not limited to both of the following:

(1) The name and social security number of the individual.

(2) Support obligation information in the specific case, including the amount of the delinquency.

9. The review and adjustment, modification, or alteration of a support order pursuant to chapter 252H upon adoption of rules pursuant to chapter 17A and periodic notification, at a minimum of once every three years, to parents subject to a support order of their rights to these services.

10. The unit shall not establish orders for spousal support. The unit shall enforce orders for spousal support only if the spouse is the custodial parent of a child for whom the unit is also enforcing a child support or medical support order.

11. *a.* Comply with federal procedures to periodically certify to the secretary of the United States department of health and human services, a list of the names of obligors determined by the unit to owe delinquent support, under a support order as defined in section 252J.1, in excess of five thousand dollars. The certification of the delinquent amount owed may be based upon one or more support orders being enforced by the unit if the delinquent support owed exceeds five thousand dollars. The certification shall include any amounts which are delinquent pursuant to the periodic payment plan when a modified order has been retroactively applied. The certification shall be in a format and shall include any supporting documentation required by the secretary.

b. All of the following shall apply to an action initiated by the unit under this subsection:

(1) The obligor shall be sent a notice by regular mail in accordance with federal law and regulations and the notice shall remain in effect until support delinquencies have been paid in full. The notice shall include all of the following:

(a) A statement regarding the amount of delin-

quent support owed by the obligor.

(b) A statement providing information that if the delinquency is in excess of five thousand dollars, the United States secretary of state may apply a passport sanction by revoking, restricting, limiting, or refusing to issue a passport as provided in 42 U.S.C. § 652(k).

(c) Information regarding the procedures for challenging the certification by the unit.

(2) (a) A challenge shall be based upon mistake of fact. For the purposes of this subsection, “mistake of fact” means a mistake in the identity of the obligor or a mistake in the amount of the delinquent child support owed if the amount did not exceed five thousand dollars on the date of the unit’s decision on the challenge.

If the obligor chooses to challenge the certification, the obligor shall notify the unit within the time period specified in the notice to the obligor. The obligor shall include any relevant information with the challenge.

(b) Upon timely receipt of the challenge, the unit shall review the certification for a mistake of fact, or refer the challenge for review to the child support agency in the state chosen by the obligor as provided by federal law.

(c) Following the unit’s review of the certification, the unit shall send a written decision to the obligor within ten days of timely receipt of the challenge.

(i) If the unit determines that a mistake of fact exists, the unit shall send notification in accordance with federal procedures withdrawing the certification for passport sanction.

(ii) If the unit determines that a mistake of fact does not exist, the obligor may contest the determination within ten days following the issuance of the decision by submitting a written request for a contested case proceeding pursuant to chapter 17A.

(3) Following issuance of a final decision under chapter 17A that no mistake of fact exists, the obligor may request a hearing before the district court pursuant to chapter 17A. The department shall transmit a copy of its record to the district court pursuant to chapter 17A. The scope of the review by the district court shall be limited to demonstration of a mistake of fact. 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 subsection.

c. Following certification to the secretary, if the unit determines that an obligor no longer owes delinquent support in excess of five thousand dollars, the unit shall provide information and notice as the secretary requires to withdraw the certification for passport sanction.

2001 Acts, ch 79, §2, 4
Subsection 4 amended

CHAPTER 252F

ADMINISTRATIVE ESTABLISHMENT OF PATERNITY

252F.7 Report to vital records.

Upon the filing of an order with the district court pursuant to this chapter, the clerk of the district court shall report the information from the order

to the bureau of vital records in the manner provided in section 600B.36.

2001 Acts, ch 24, §41
Section amended

CHAPTER 255

MEDICAL AND SURGICAL TREATMENT OF INDIGENT PERSONS

255.1 Complaint — determination of medical assistance eligibility.

Any adult resident of the state may file a complaint in the office of the clerk of any juvenile court, charging that any legal resident of Iowa residing in the county where the complaint is filed is pregnant or is suffering from some malady or deformity that can probably be improved or cured or advantageously treated by medical or surgical treatment or hospital care, and that neither such person nor persons legally chargeable with the person’s support are able to pay therefor.

The county general assistance director shall ascertain from the local office of human services if an

applicant for the indigent patient program would qualify for medical assistance or the medically needy program under chapter 249A without the spend-down provision required pursuant to section 249A.3, subsection 2, paragraph “i”. If the applicant qualifies, the patient shall be certified for medical assistance and shall not be counted under this chapter.

Section not amended; internal reference change applied

255.29 Medical care for parolees and persons on work release.

The director of the Iowa department of corrections may send former inmates of the institutions

provided for in section 904.102, while on parole or work release, to the hospital of the university of Iowa college of medicine for treatment and care as provided in this chapter, without securing the order of the court required in other cases. The director may pay the traveling expenses of any patient

thus committed, and when necessary the traveling expenses of an attendant of the patient out of funds appropriated for the use of the department.

2001 Acts, ch 74, §18
Section amended

CHAPTER 256

DEPARTMENT OF EDUCATION

256.7 Duties of state board.

Except for the college student aid commission and the public broadcasting board and division, the state board shall:

1. Adopt and establish policy for programs and services of the department pursuant to law.
2. Constitute the state board for vocational education under chapter 258.
3. Prescribe standards and procedures for the approval of practitioner preparation programs and professional development programs, offered by practitioner preparation institutions and area education agencies, in this state. Procedures provided for approval of programs shall include procedures for enforcement of the prescribed standards and shall not include a procedure for the waiving of any of the standards prescribed.
4. Adopt, and update annually, a five-year plan for the achievement of educational goals in Iowa.
5. Adopt rules under chapter 17A for carrying out the responsibilities of the department.
6. Hear appeals of persons aggrieved by decisions of boards of directors of school corporations under chapter 290 and other appeals prescribed by law. The state board may review the record and shall review the decision of the director of the department of education or the administrative law judge designated for any appeals heard and decided by the director under chapter 290, and may affirm, modify, or vacate the decision, or may direct a rehearing before the director.
7. Adopt rules under chapter 17A for the use of telecommunications as an instructional tool for students enrolled in kindergarten through grade twelve and served by local school districts, accredited or approved nonpublic schools, area education agencies, community colleges, institutions of higher education under the state board of regents, and independent colleges and universities in elementary and secondary school classes and courses. The rules shall include but need not be limited to rules relating to programs, educational policy, instructional practices, staff development, use of pilot projects, curriculum monitoring, and the accessibility of licensed teachers.

When curriculum is provided by means of telecommunications, it shall be taught by an appropriately licensed teacher. The teacher shall either be present in the classroom, or be present at the loca-

tion at which the curriculum delivered by means of telecommunications originates.

The rules shall provide that when the curriculum is taught by an appropriately licensed teacher at the location at which the telecommunications originates, the curriculum received at a remote site shall be under the supervision of a licensed teacher. The licensed teacher at the originating site may provide supervision of students at a remote site or the school district in which the remote site is located may provide for supervision at the remote site if the school district deems it necessary or if requested to do so by the licensed teacher at the originating site. For the purposes of this subsection, "supervision" means that the curriculum is monitored by a licensed teacher and the teacher is accessible to the students receiving the curriculum by means of telecommunications.

The state board shall establish an advisory committee to make recommendations for rules required under this subsection on the use of telecommunications as an instructional tool. The committee shall be composed of representatives from community colleges, area education agencies, accredited or approved nonpublic schools, and local school districts from various enrollment categories. The representatives shall include board members, school administrators, teachers, parents, students, and associations interested in education.

For the purpose of the rules adopted by the state board, telecommunications means narrowcast communications through systems that are directed toward a narrowly defined audience and includes interactive live communications.

8. Rules adopted under this section shall provide that telecommunications shall not be used by school districts as the exclusive means to provide any course which is required by the minimum educational standards for accreditation.

9. Develop evaluation procedures that will measure the effects of instruction by means of telecommunications on student achievement, socialization, intellectual growth, motivation, and other related factors deemed relevant by the state board, for the development of an educational data base. The state board shall consult with the state board of regents and the practitioner preparation departments at its institutions, other practitioner preparation departments located within private

colleges and universities, educational research agencies or facilities, and other agencies deemed appropriate by the state board, in developing these procedures.

10. Adopt rules pursuant to chapter 17A relating to educational programs and budget limitations for educational programs pursuant to sections 282.28, 282.29, 282.30, and 282.31.

11. Prescribe guidelines for facility standards, maximum class sizes, and maximum in classroom pupil-teacher and teacher-aide ratios for grades kindergarten through three and before and after school and summer child care programs provided under the direction of the school district. The department also shall indicate modifications to such guidelines necessary to address the needs of at-risk children.

12. Elect to a two-year term, from its members in each even-numbered year, a president of the state board, who shall serve until a successor is elected and qualified.

13. Adopt rules and a procedure for accrediting all apprenticeship programs in the state which receive state or federal funding. In developing the rules, the state board shall consult with schools and labor or trade organizations affected by or currently operating apprenticeship or training programs. Rules adopted shall be the same or similar to criteria established for the operation of apprenticeship programs at community colleges.

14. Adopt rules which require each community college which establishes a new jobs training project or projects and receives funds derived from or associated with the project or projects to establish a separate account to act as a repository for any funds received and to report annually, by January 15, to the general assembly on funds received and disbursed during the preceding fiscal year in the form required by the department.

15. If funds are appropriated by the general assembly for the program, adopt rules for the administration of the teacher exchange program, including, but not limited to, rules for application to participate in the program, rules relating to the number of times that a given applicant may participate in the program, and rules describing reimbursable expenses and establishing honoraria for teacher participants.

16. Adopt rules that set standards for approval of family support preservice and in-service training programs, offered by area education agencies and practitioner preparation institutions, and family support programs offered by or through local school districts.

17. Receive and review the budget and unified plan of service submitted by the division of libraries and information services.

18. Adopt rules that include children who retain some sight but who have a medically diagnosed expectation of visual deterioration within the definition of children requiring special education pursuant to section 256B.2, subsection 1.

Rules adopted pursuant to this subsection shall provide for or include, but are not limited to, the following:

a. A presumption that proficiency in braille reading and writing is essential for satisfactory educational progress for a visually impaired student who is not able to communicate in print with the same level of proficiency as a student of otherwise comparable ability at the same grade level. This presumption includes a student as defined in paragraph "b". A student for whom braille services are appropriate, as defined in this subsection, is entitled to instruction in braille reading and writing that is sufficient to enable the pupil to communicate with the same level of proficiency as a pupil of otherwise comparable ability at the same grade level.

b. A pupil who retains some sight but who has a medically diagnosed expectation of visual deterioration in adolescence or early adulthood may qualify for instruction in braille reading and writing.

c. Instruction in braille reading and writing may be used in combination with other special education services appropriate to a pupil's educational needs.

d. The annual review of a pupil's individual education plan shall include discussion of instruction in braille reading and writing and a written explanation of the reasons why the pupil is using a given reading and writing medium or media. If the reasons have not changed since the previous year, the written explanation for the current year may refer to the fuller explanation from the previous year.

e. A pupil as defined in paragraph "b" whose primary learning medium is expected to change may begin instruction in the new medium before it is the only medium the pupil can effectively use.

f. A pupil who receives instruction in braille reading and writing pursuant to this subsection shall be taught by a teacher licensed to teach students with visual impairments.

19. Define the minimum school day as a day consisting of five and one-half hours of instructional time for grades one through twelve. The minimum hours shall be exclusive of the lunch period, but may include passing time between classes. Time spent on parent-teacher conferences shall be considered instructional time. A school or school district may record a day of school with less than the minimum instructional hours as a minimum school day if any of the following apply:

a. If emergency health or safety factors require the late arrival or early dismissal of students on a specific day.

b. If the total hours of instructional school time for grades one through twelve for any five consecutive school days equal a minimum of twenty-seven and one-half hours, even though any one day of school is less than the minimum instructional hours because of a staff development opportunity provided for the professional instruc-

tional staff or because parent-teacher conferences have been scheduled beyond the regular school day. Furthermore, if the total hours of instructional time for the first four consecutive days equal at least twenty-seven and one-half hours because parent-teacher conferences have been scheduled beyond the regular school day, a school or school district may record zero hours of instructional time on the fifth consecutive school day as a minimum school day.

20. Adopt rules that require the board of directors of a school district to waive school fees for indigent families.

21. Develop and adopt rules by July 1, 1999, incorporating accountability for student achievement into the standards and accreditation process described in section 256.11. The rules shall provide for all of the following:

a. Requirements that all school districts and accredited nonpublic schools develop, implement, and file with the department a comprehensive school improvement plan that includes, but is not limited to, demonstrated school, parental, and community involvement in assessing educational needs, establishing local education standards and student achievement levels, and, as applicable, the consolidation of federal and state planning, goal-setting, and reporting requirements.

b. A set of core academic indicators in mathematics and reading in grades four, eight, and eleven, a set of core academic indicators in science in grades eight and eleven, and another set of core indicators that includes, but is not limited to, graduation rate, postsecondary education, and successful employment in Iowa. Annually, the department shall report state data for each indicator in the condition of education report.

c. A requirement that all school districts and accredited nonpublic schools annually report to the department and the local community the district-wide progress made in attaining student achievement goals on the academic and other core indicators and the district-wide progress made in attaining locally established student learning goals. The school districts and accredited nonpublic schools shall demonstrate the use of multiple assessment measures in determining student achievement levels. The school districts and accredited nonpublic schools may report on other locally determined factors influencing student achievement. The school districts and accredited nonpublic schools shall also report to the local community their results by individual attendance center.

22. Adopt rules and a procedure for the approval of para-educator preparation programs offered by a public school district, area education agency, community college, institution of higher education under the state board of regents, or an accredited private institution as defined in section 261.9, subsection 1. The programs shall train and recommend individuals for para-educator certification under section 272.12.

23. Adopt rules directing the community colleges to annually and uniformly submit data from the most recent fiscal year to the division of community colleges and workforce preparation, using criteria determined and prescribed by the division via the management information system. Financial data submitted to the division by a community college shall be broken down by fund. Community colleges shall provide data to the division by a deadline set by the division. The deadline shall be set for a date that permits the division to include the data in a report submitted for state board approval and for review by December 15 of each year by the house and senate standing education committees and the joint subcommittee on education appropriations.

24. Adopt rules on or before January 1, 2001, to require school districts and accredited nonpublic schools to adopt local policies relating to health services, media services programs, and guidance programs, as part of the general accreditation standards applicable to school districts pursuant to section 256.11. This subsection shall be applicable strictly for reporting purposes and shall not be interpreted to require school districts and accredited nonpublic schools to provide or offer health services, media services programs, or guidance programs.

2001 Acts, ch 24, §66, 74; 2001 Acts, ch 26, §1
Subsection 7, unnumbered paragraph 3 amended

256.9 Duties of director.

Except for the college student aid commission and the public broadcasting board and division, the director shall:

1. Carry out programs and policies as determined by the state board.

2. Recommend to the state board rules necessary to implement programs and services of the department.

3. Establish divisions of the department as necessary or desirable in addition to divisions required by law. The organization of the department shall promote coordination of functions and services relating to administration, supervision, and improvement of instruction.

4. Employ personnel and assign duties and responsibilities of the department. The director shall appoint a deputy director and division administrators deemed necessary. They shall be appointed on the basis of their professional qualifications, experience in administration, and background. Members of the professional staff are not subject to the merit system provisions of chapter 19A and are subject to section 256.10.

5. Transmit to the department of management information about the distribution of state and federal funds pursuant to state law and rules of the department.

6. Develop a budget and transmit to the department of management estimates of expenditure requirements for all functions and services of

the department.

7. Accept and administer federal funds apportioned to the state for educational and rehabilitation purposes and accept surplus commodities for distribution when made available by a governmental agency. The director may also accept grants and gifts on behalf of the department.

8. Cooperate with other governmental agencies and political subdivisions in the development of rules and enforcement of laws relating to education.

9. Conduct research on education matters.

10. Submit to each regular session of the general assembly recommendations relating to revisions or amendments to the school laws.

11. Approve, coordinate, and supervise the use of electronic data processing by school districts, area education agencies, and merged areas.

12. Act as the executive officer of the state board.

13. Act as custodian of a seal for the director's office and authenticate all true copies of decisions or documents.

14. Appoint advisory committees, in addition to those required by law, to advise in carrying out the programs, services, and functions of the department.

15. Provide the same educational supervision for the schools maintained by the director of human services as is provided for the public schools of the state and make recommendations to the director of human services for the improvement of the educational program in those institutions.

16. Interpret the school laws and rules relating to the school laws.

17. Hear and decide appeals arising from the school laws not otherwise specifically granted to the state board.

18. Prepare forms and procedures as necessary to be used by area education agency boards, district boards, school officials, principals, teachers, and other employees, and to insure uniformity, accuracy, and efficiency in keeping records in both pupil and cost accounting, the execution of contracts, and the submission of reports, and notify the area education agency board, district board, or school authorities when a report has not been filed in the manner or on the dates prescribed by law or by rule that the school will not be accredited until the report has been properly filed.

19. Determine by inspection, supervision, or otherwise, the condition, needs, and progress of the schools under the supervision of the department, make recommendations to the proper authorities for the correction of deficiencies and the educational and physical improvement of the schools, and request a state audit of the accounts of a school district, area education agency, school official, or school employee handling school funds when it is apparent that an audit should be made.

20. Preserve reports, documents, and correspondence that may be of a permanent value,

which shall be open for inspection under reasonable conditions.

21. Keep a record of the business transacted by the director.

22. Endeavor to promote among the people of the state an interest in education.

23. Classify and define the various schools under the supervision of the department, formulate suitable courses of study, and publish and distribute the classifications and courses of study and promote their use.

24. Report biennially to the governor, at the time provided by law, the condition of the schools under the department's supervision, including the number of school districts, the number and value of schoolhouses, the enrollment and attendance in each district for the previous year, any measures proposed for the improvement of the public schools, financial and statistical information of public importance, and general information relating to educational affairs and conditions within the state or elsewhere. The report shall also review the programs and services of the department.

25. Direct area education agency administrators to arrange for professional teachers' meetings, demonstration teaching, or other field work for the improvement of instruction as best fits the needs of the public schools in each area.

26. Cause to be printed in book form, during the months of June and July in the year 1987 and every four years thereafter, if deemed necessary, all school laws then in force with forms, rulings, decisions, notes, and suggestions which may aid school officers in the proper discharge of their duties. A sufficient number shall be furnished to school officers, directors, superintendents, area administrators, members of the general assembly, and others as reasonably requested.

27. Direct that any amendments or changes in the school laws, with necessary notes and suggestions, be distributed as prescribed in subsection 26 annually.

28. Prepare and submit to each regular session of the general assembly a report containing the recommendations of the state board as to revisions, amendments, and new provisions of school laws.

29. Reserved.

30. Approve the salaries of area education agency administrators.

31. Develop criteria and procedures to assist in the identification of at-risk children and their developmental needs.

32. Develop, in conjunction with the child development coordinating council or other similar agency, child-to-staff ratio recommendations and standards for at-risk programs based on national literature and test results and Iowa longitudinal test results.

33. Develop programs in conjunction with the center for early development education to be made available to the school districts to assist them in

identification of at-risk children and their developmental needs.

34. Conduct or direct the area education agency to conduct feasibility surveys and studies, if requested under section 282.11, of the school districts within the area education agency service areas and all adjacent territory, including but not limited to contiguous districts in other states, for the purpose of evaluating and recommending proposed whole grade sharing agreements requested under section 282.7 and section 282.10, subsections 1 and 4. The surveys and studies shall be revised periodically to reflect reorganizations which may have taken place in the area education agency, adjacent territory, and contiguous districts in other states. The surveys and studies shall include a cover page containing recommendations and a short explanation of the recommendations. The factors to be used in determining the recommendations include, but are not limited to:

- a. The possibility of long-term survival of the proposed alliance.
- b. The adequacy of the proposed educational programs versus the educational opportunities offered through a different alliance.
- c. The financial strength of the new alliance.
- d. Geographical factors.
- e. The impact of the alliance on surrounding schools.

Copies of the completed surveys and studies shall be transmitted to the affected districts' school boards.

35. Develop standards and instructional materials to do all of the following:

- a. Assist school districts in developing appropriate before and after school programs for elementary school children.
- b. Assist school districts in the development of child care services and programs to complement half-day and all-day kindergarten programs.
- c. Assist school districts in the development of appropriate curricula for all-day, everyday kindergarten programs.
- d. Assist school districts in the development of appropriate curricula for the early elementary grades one through three.
- e. Assist prekindergarten instructors in the development of appropriate curricula and teaching practices.

Standards and materials developed shall include materials which employ developmentally appropriate practices and incorporate substantial parental involvement. The materials and standards shall include alternative teaching approaches including collaborative teaching and alternative dispute resolution training. The department shall consult with the child development coordinating council, the state child care advisory council, the department of human services, the state board of regents center for early developmental education, the area education agencies, the department of child development in the college

of family and consumer sciences at Iowa state university of science and technology, the early childhood elementary division of the college of education at the university of Iowa, and the college of education at the university of northern Iowa, in developing these standards and materials.

For purposes of this section "*substantial parental involvement*" means the physical presence of parents in the classroom, learning experiences designed to enhance the skills of parents in parenting and in providing for their children's learning and development, or educational materials which may be borrowed for home use.

36. Develop, or direct the area education agencies to develop, a statewide technical assistance support network to provide school districts or district subcontractors under section 279.49 with assistance in creating developmentally appropriate programs under section 279.49.

37. Administer and approve grants to school districts which provide innovative in-school programming for at-risk children in grades kindergarten through three, in addition to regular school curricula for children participating in the program, with the funds for the grants being appropriated for at-risk children by the general assembly. Grants approved shall be for programs in schools with a high percentage of at-risk children. Preference shall be given to programs which integrate at-risk children with the rest of the school population, which agree to limit class size and pupil-teacher ratios, which include parental involvement, which demonstrate community support, which cooperate with other community agencies, which provide appropriate guidance counseling services, and which use teachers with an early childhood endorsement. Grant programs shall contain an evaluation component that measures student outcomes.

38. Develop a model written publications code including reasonable provisions for the regulation of the time, place, and manner of student expression.

39. Provide educational resources and technical assistance to schools relating to the implementation of the nutritional guidelines for food and beverages sold on public school grounds or on the grounds of nonpublic schools receiving funds under section 283A.10.

40. Develop an application and review process for the identification of quality instructional centers at the community colleges. The process developed shall include but is not limited to the development of criteria for the identification of a quality instructional center as well as for the enhancement of other program offerings in order to upgrade programs to quality instructional center status. Criteria established shall be designed to increase student access to programs, establish high quality occupational and vocational education programs, and enhance interinstitutional cooperation in program offerings.

41. Explore, in conjunction with the state board of regents, the need for coordination between school districts, area education agencies, 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.

42. Develop an application and review process for approval of administrative and program sharing agreements between two or more community colleges or a community college and an institution of higher education under the board of regents entered into pursuant to section 260C.46.

43. Prepare a plan and a report for ensuring that all Iowa children will be able to satisfy the requirements for high school graduation. The plan and report shall include a statement of the dimensions of the dropout problem in Iowa; a survey of existing programs geared to dropout prevention; a plan for use of competency-based outcome methods and measures; proposals for alternative means for satisfying graduation requirements including alternative high school settings, supervised vocational experiences, education experiences within the correctional system, screening and assessment mechanisms for identifying students who are at risk of dropping out and the development of an individualized education plan for identified students; a requirement that schools provide information to students who drop out of school on options for pursuing education at a later date; the development of basic materials and information for schools to present to students leaving school; a requirement that students notify their school districts of residence when the student discontinues school, including the reasons for leaving school and future plans for career development; a requirement that, unless a student chooses to make the information relating to the student leaving school confidential, schools make the information available to community colleges, area education agencies, and other educational institutions upon request; recommendations for the establishment of pilot projects for the development of model alternative options education programs; a plan for implementation of any recommended courses of action to attain a zero dropout rate by the year 2000; and other requirements necessary to achieve the goals of this subsection. Alternative means for satisfying graduation requirements which relate to the development of individualized education plans for students who have dropped out of the regular school program shall include, but are not limited to, a tracking component that requires a school district to maintain periodic contact with a student, assistance to a dropout in curing any of the student's academic deficiencies, an assessment of the student's employability skills and plans to improve those skills, and treatment or counseling for a student's social

needs. The department shall also prepare a cost estimate associated with implementation of proposals to attain a zero dropout rate, including but not limited to evaluation of existing funding sources and a recommended allocation of the financial burden among federal, state, local, and family resources.

44. If funds are appropriated by the general assembly for the program, administer the teacher exchange program, develop forms for requests to participate in the program, and process requests from teacher participants for reimbursement of expenses incurred as a result of participating in the program.

45. Develop in-service and preservice training programs through the area education agencies and practitioner preparation institutions and guidelines for school districts for the establishment of family support programs. Guidelines developed shall describe barriers to learning and development which can affect children served by family support programs.

46. Serve as an ex officio member of the commission of libraries.

47. Grant annual exemptions from one or more of the minimum education standards contained in section 256.11 and rules adopted by the state board of education to nonpublic schools or public school districts who are engaging in comprehensive school transformation efforts that are broadly consistent with the current standards, but require exemption from one or more standards in order to implement the comprehensive school transformation effort within the nonpublic school or school district. Nonpublic schools or public school districts wishing to be exempted from one or more of the minimum standards contained in section 256.11 and rules adopted by the state board of education shall file a request for an exemption with the department. Requests for exemption shall include all of the following:

a. A description of the nonpublic school or public school district's school transformation plan, including but not limited to new structures, methodologies, and creative approaches designed to help students achieve at higher levels.

b. Identification of the standard or standards for which the exemption is being sought, including a statement of the reasons for requesting the exemption from the standard or standards.

c. Identification of a method for periodic demonstration that student achievement will not be lessened by the granting of the exemption.

The director shall develop a procedure for application for exemption and receipt, review, and evaluation of nonpublic school and public school district requests, including but not limited to development of criteria for the granting or denying of requests for exemptions and a time line for the submission, review, and granting or denying of requests for exemption from one or more standards.

48. Develop and administer, with the cooper-

ation of the commission of veterans affairs, a program which shall be known as “*operation recognition*”. The purpose of the program is to award high school diplomas to World War II veterans who left high school prior to graduation to enter United States military service. The department and the commission shall jointly develop an application procedure, distribute applications, and publicize the program to school districts, accredited nonpublic schools, county commissions of veteran affairs, veterans organizations, and state, regional, and local media. All honorably discharged World War II veterans who are residents or former residents of the state, who served between September 16, 1940, and December 31, 1946, and who did not return to school and complete their education after the war shall be eligible to receive a diploma. Diplomas may be issued posthumously. Upon approval of an application, the department shall issue an honorary high school diploma for an eligible veteran. The diploma shall indicate the veteran’s school of attendance. The department and the commission shall work together to provide school districts, schools, communities, and county commissions of veteran affairs with information about hosting a diploma ceremony on or around Veterans Day. The diploma shall be mailed to the veteran or, if the veteran is deceased, to the veteran’s family.

49. Reconcile, with the assistance of the community colleges, audited financial statements and the financial data submitted to the department. The reconciliation shall include an analysis of funding by funding source.

50. Develop core knowledge and skill criteria models, based upon the Iowa teaching standards, for the evaluation, the advancement, and for teacher career development purposes pursuant to chapter 284. The model criteria shall further define the characteristics of quality teaching as established by the Iowa teaching standards.

2001 Acts, ch 161, §14; 2001 Acts, ch 181, §12
Subsection 46 stricken and former subsections 47 – 50 renumbered as 46 – 49
NEW subsection 50

256.11 Educational standards.

The state board shall adopt rules under chapter 17A and a procedure for accrediting all public and nonpublic schools in Iowa offering instruction at any or all levels from the prekindergarten level through grade twelve. The rules of the state board shall require that a multicultural, gender fair approach is used by schools and school districts. The educational program shall be taught from a multicultural, gender fair approach. Global perspectives shall be incorporated into all levels of the educational program.

The rules adopted by the state board pursuant to section 256.17, Code Supplement 1987, to establish new standards shall satisfy the requirements of this section to adopt rules to implement the educational program contained in this section.

The educational program shall be as follows:

1. If a school offers a prekindergarten program, the program shall be designed to help children to work and play with others, to express themselves, to learn to use and manage their bodies, and to extend their interests and understanding of the world about them. The prekindergarten program shall relate the role of the family to the child’s developing sense of self and perception of others. Planning and carrying out prekindergarten activities designed to encourage cooperative efforts between home and school shall focus on community resources. Except as otherwise provided in this subsection, a prekindergarten teacher shall hold a license certifying that the holder is qualified to teach in prekindergarten. A nonpublic school which offers only a prekindergarten may, but is not required to, seek and obtain accreditation.

If the board of directors of a school district contracts for the operation of a prekindergarten program, the program shall be under the oversight of an appropriately licensed teacher. If the program contracted with was in existence on July 1, 1989, oversight of the program shall be provided by the district. If the program contracted with was not in existence on July 1, 1989, the director of the program shall be a licensed teacher and the director shall provide program oversight. Any director of a program contracted with by a school district under this section who is not a licensed teacher is required to register with the department of education.

2. The kindergarten program shall include experiences designed to develop healthy emotional and social habits and growth in the language arts and communication skills, as well as a capacity for the completion of individual tasks, and protect and increase physical well-being with attention given to experiences relating to the development of life skills and human growth and development. A kindergarten teacher shall be licensed to teach in kindergarten. An accredited nonpublic school must meet the requirements of this subsection only if the nonpublic school offers a kindergarten program.

3. The following areas shall be taught in grades one through six: English-language arts, social studies, mathematics, science, health, human growth and development, physical education, traffic safety, music, and visual art. The health curriculum shall include the characteristics of communicable diseases including acquired immune deficiency syndrome. The state board as part of accreditation standards shall adopt curriculum definitions for implementing the elementary program.

4. The following shall be taught in grades seven and eight: English-language arts; social studies; mathematics; science; health; human growth and development, family, consumer, career, and technology education; physical education; music; and visual art. The health curriculum shall include the characteristics of sexually transmitted diseases and acquired immune deficiency syndrome. The state board as part of accreditation standards shall adopt curriculum definitions for

implementing the program in grades seven and eight. However, this subsection shall not apply to the teaching of family, consumer, career, and technology education in nonpublic schools.

5. In grades nine through twelve, a unit of credit consists of a course or equivalent related components or partial units taught throughout the academic year. The minimum program to be offered and taught for grades nine through twelve is:

a. Five units of science including physics and chemistry; the units of physics and chemistry may be taught in alternate years.

b. Five units of the social studies including instruction in voting statutes and procedures, voter registration requirements, the use of paper ballots and voting machines in the election process, and the method of acquiring and casting an absentee ballot. All students shall complete a minimum of one-half unit of United States government and one unit of United States history. The one-half unit of United States government shall include the voting procedure as described in this lettered paragraph and section 280.9A. The government instruction shall also include a study of the Constitution of the United States and the Bill of Rights contained in the Constitution and an assessment of a student's knowledge of the Constitution and the Bill of Rights.

The county auditor, upon request and at a site chosen by the county auditor, shall make available to schools within the county voting machines or sample ballots that are generally used within the county, at times when these machines or sample ballots are not in use for their recognized purpose.

c. Six units of English-language arts.

d. Four units of a sequential program in mathematics.

e. Two additional units of mathematics.

f. Four sequential units of one foreign language other than American sign language. Provision of instruction in American sign language shall be in addition to and not in lieu of provision of instruction in other foreign languages. The department may waive the third and fourth years of the foreign language requirement on an annual basis upon the request of the board of directors of a school district or the authorities in charge of a nonpublic school if the board or authorities are able to prove that a licensed teacher was employed and assigned a schedule that would have allowed students to enroll in a foreign language class, the foreign language class was properly scheduled, students were aware that a foreign language class was scheduled, and no students enrolled in the class.

g. All students physically able shall be required to participate in physical education activities during each semester they are enrolled in school except as otherwise provided in this paragraph. A minimum of one-eighth unit each semester is required. A twelfth grade student who meets the requirements of this paragraph may be ex-

cused from the physical education requirement by the principal of the school in which the student is enrolled if the parent or guardian of the student requests in writing that the student be excused from the physical education requirement. A student who wishes to be excused from the physical education requirement must be seeking to be excused in order to enroll in academic courses not otherwise available to the student, or be enrolled or participating in one of the following:

(1) A cooperative or work-study program or other educational program authorized by the school which requires the student to leave the school premises for specified periods of time during the school day.

(2) An organized and supervised athletic program which requires at least as much participation per week as one-eighth unit of physical education.

Students in grades nine through eleven may be excused from the physical education requirement in order to enroll in academic courses not otherwise available to the student if the board of directors of the school district in which the school is located, or the authorities in charge of the school, if the school is a nonpublic school, determine that students from the school may be permitted to be excused from the physical education requirement. A student may be excused by the principal of the school in which the student is enrolled, in consultation with the student's counselor, for up to one semester, trimester, or the equivalent of a semester or trimester, per year if the parent or guardian of the student requests in writing that the student be excused from the physical education requirement. The student seeking to be excused from the physical education requirement must, at some time during the period for which the excuse is sought, be a participant in an organized and supervised athletic program which requires at least as much time of participation per week as one-eighth unit of physical education.

The principal of the school shall inform the superintendent of the school district or nonpublic school that the student has been excused. Physical education activities shall emphasize leisure time activities which will benefit the student outside the school environment and after graduation from high school.

h. A minimum of three sequential units in at least four of the following six vocational service areas: agriculture, business or office occupations, health occupations, family and consumer sciences or home economics occupations, industrial technology or trade and industrial education, and marketing education. Instruction shall be competency-based, articulated with postsecondary programs of study, and include field, laboratory, or on-the-job training. Each sequential unit shall include instruction in a minimum set of competencies established by the department of education that relate to the following: new and emerging

technologies; job-seeking, job-adaptability, and other employment, self-employment and entrepreneurial skills that reflect current industry standards and labor-market needs; and reinforcement of basic academic skills. The instructional programs shall also comply with the provisions of chapter 258 relating to vocational education. However, this paragraph does not apply to the teaching of vocational education in nonpublic schools.

The department of education shall permit school districts, in meeting the requirements of this section, to use vocational core courses in more than one vocational service area and to use multi-occupational courses to complete a sequence in more than one vocational service area.

i. Three units in the fine arts which shall include at least two of the following: dance, music, theatre, and visual art.

j. One unit of health education which shall include personal health; food and nutrition; environmental health; safety and survival skills; consumer health; family life; human growth and development; substance abuse and nonuse; emotional and social health; health resources; and prevention and control of disease, including sexually transmitted diseases and acquired immune deficiency syndrome.

The state board as part of accreditation standards shall adopt curriculum standards for implementing the program in grades nine through twelve.

6. A pupil is not required to enroll in either physical education or health courses if the pupil's parent or guardian files a written statement with the school principal that the course conflicts with the pupil's religious belief.

7. Programs that meet the needs of each of the following:

- a.* Pupils requiring special education.
- b.* Gifted and talented pupils.
- c.* At-risk students.

8. Upon request of the board of directors of a public school district or the authorities in charge of a nonpublic school, the director may, for a number of years to be specified by the director, grant the district board or the authorities in charge of the nonpublic school exemption from one or more of the requirements of the educational program specified in subsection 5. The exemption may be renewed. Exemptions shall be granted only if the director deems that the request made is an essential part of a planned innovative curriculum project which the director determines will adequately meet the educational needs and interests of the pupils and be broadly consistent with the intent of the educational program as defined in subsection 5.

The request for exemption shall include all of the following:

- a.* Rationale of the project to include supportive research evidence.
- b.* Objectives of the project.

c. Provisions for administration and conduct of the project, including the use of personnel, facilities, time, techniques, and activities.

d. Plans for evaluation of the project by testing and observational measures of pupil progress in reaching the objectives.

e. Plans for revisions of the project based on evaluation measures.

f. Plans for periodic reports to the department.

g. The estimated cost of the project.

9. Reserved.

9A. Reserved.

10. The state board shall establish an accreditation process for school districts and nonpublic schools seeking accreditation pursuant to this subsection and subsections 11 and 12. By July 1, 1989, all school districts shall meet standards for accreditation. For the school year commencing July 1, 1989, and school years thereafter, the department of education shall use a two-phase process for the continued accreditation of schools and school districts.

Phase I shall consist of annual monitoring by the department of education of all accredited schools and school districts for compliance with accreditation standards adopted by the state board of education as provided in this section. The phase I monitoring requires that accredited schools and school districts annually complete accreditation compliance forms adopted by the state board and file them with the department of education. Phase I monitoring requires a comprehensive desk audit of all accredited schools and school districts including review of accreditation compliance forms, accreditation visit reports, methods of administration reports, and reports submitted in compliance with section 256.7, subsection 21, paragraph "a", and section 280.12.

The department shall conduct site visits to schools and school districts to address accreditation issues identified in the desk audit. Such a visit may be conducted by an individual departmental consultant or may be a comprehensive site visit by a team of departmental consultants and other educational professionals. The purpose of a comprehensive site visit is to determine that a district is in compliance with minimum standards and to provide a general assessment of educational practices in a school or school district and make recommendations with regard to the visit findings for the purposes of improving educational practices above the level of minimum compliance. The department shall establish a long-term schedule of site visits that includes visits of all accredited schools and school districts at least once every five years.

Phase II requires the use of an accreditation committee, appointed by the director of the department of education, to conduct an on-site visit to an accredited school or school district if any of the following conditions exist:

- a.* When either the annual monitoring or the

biennial on-site visit of phase I indicates that a school or school district is deficient and fails to be in compliance with accreditation standards.

b. In response to a petition filed with the director requesting such a committee visitation that is signed by eligible electors residing in the school district equal in number to at least twenty percent of the registered voters of the school district.

c. In response to a petition filed with the director requesting such a committee visitation that is signed by twenty percent or more of the parents or guardians who have children enrolled in the school or school district.

d. At the direction of the state board of education.

The number and composition of the membership of an accreditation committee shall be determined by the director and may vary due to the specific nature or reason for the visit. In all situations, however, the chairperson and a majority of the committee membership shall be from the instructional and administrative program specialty staff of the department of education. Other members may include instructional and administrative staff from school districts, area education agencies, institutions of higher education, local board members and the general public. An accreditation committee visit to a nonpublic school requires membership on the committee from nonpublic school instructional or administrative staff or board members. A member of a committee shall not have a direct interest in the nonpublic school or school district being visited.

Rules adopted by the state board may include provisions for coordination of the accreditation process under this section with activities of accreditation associations.

Prior to a visit to a school district or nonpublic school, members of the accreditation committee shall have access to all annual accreditation report information filed with the department by that nonpublic school or school district.

After visiting the school district or nonpublic school, the accreditation committee shall determine whether the accreditation standards have been met and shall make a report to the director, together with a recommendation whether the school district or nonpublic school shall remain accredited. The accreditation committee shall report strengths and weaknesses, if any, for each standard and shall advise the school or school district of available resources and technical assistance to further enhance strengths and improve areas of weakness. A school district or nonpublic school shall be provided with the opportunity to respond to the accreditation committee's report.

11. The director shall review the accreditation committee's report, and the response of the school district or nonpublic school, and provide a report and recommendation to the state board along with copies of the accreditation committee's report, the response to the report, and other pertinent infor-

mation. The state board shall determine whether the school district or nonpublic school shall remain accredited. If the state board determines that a school district or nonpublic school should not remain accredited, the director, in cooperation with the board of directors of the school district, or authorities in charge of the nonpublic school, shall establish a plan prescribing the procedures that must be taken to correct deficiencies in meeting the standards, and shall establish a deadline date for completion of the procedures. The plan is subject to approval of the state board.

12. During the period of time specified in the plan for its implementation by a school district or nonpublic school, the school district or school remains accredited. The accreditation committee shall revisit the school district or nonpublic school and shall determine whether the deficiencies in the standards have been corrected and shall make a report and recommendation to the director and the state board. The committee recommendation shall specify whether the school district or school shall remain accredited or under what conditions the district may remain accredited. The conditions may include, but are not limited to, providing temporary oversight authority, operational authority, or both oversight and operational authority to the director and the state board for some or all aspects of the school district operation, in order to bring the school district into compliance with minimum standards. The state board shall review the report and recommendation, may request additional information, and shall determine whether the deficiencies have been corrected. If the deficiencies have not been corrected, and the conditional accreditation alternatives contained in the report are not mutually acceptable to the local board and the state board, the state board shall merge the territory of the school district with one or more contiguous school districts at the end of the school year. Division of assets and liabilities of the school district shall be as provided in sections 275.29 through 275.31. Until the merger is completed, and subject to a decision by the state board of education, the school district shall pay tuition for its resident students to an accredited school district under section 282.24. However, in lieu of merger and payment of tuition by a nonaccredited school district, the state board may place a district under receivership for the remainder of the school year. The receivership shall be under the direct supervision and authority of the director. The decision of whether to merge the school district and require payment of tuition for the district's students or to place the district under receivership shall be based upon a determination by the state board of the best interests of the students, parents, residents of the community, teachers, administrators, and board members of the district and the recommendations of the accreditation committee and the director. If the state board declares a nonpublic school to be nonaccredited,

the removal of accreditation shall take effect on the date established by the resolution of the state board, which shall be no later than the end of the school year in which the nonpublic school is declared to be nonaccredited.

13. Notwithstanding subsections 1 through 12 and as an exception to their requirements, a private high school or private combined junior-senior high school operated for the express purpose of teaching a program designed to qualify its graduates for matriculation at accredited four-year or equivalent liberal arts, scientific, or technological colleges or universities shall be placed on a special accredited list of college preparatory schools, which list shall signify accreditation of the school for that express purpose only, if:

a. The school complies with minimum standards established by the Code other than this section, and rules adopted under the Code, applicable to:

- (1) Courses comprising the limited program.
- (2) Health requirements for personnel.
- (3) Plant facilities.
- (4) Other environmental factors affecting the programs.

b. At least eighty percent of those graduating from the school within the four most recent calendar years, other than those graduating who are aliens, graduates entering military or alternative civilian service, or graduates deceased or incapacitated before college acceptance, have been accepted by accredited four-year or equivalent liberal arts, scientific, or technological colleges or universities.

c. A school claiming to be a private college preparatory school which fails to comply with the requirement of paragraph “*b*” of this subsection shall be placed on the special accredited list of college preparatory schools probationally if the school complies with the requirements of paragraph “*a*” of this subsection, but a probational accreditation shall not continue for more than four successive years.

14. Notwithstanding subsections 1 through 13 and as an exception to their requirements, a nonpublic grade school which is reopening is accredited even if it does not have a complete grade one through grade six program. However, the nonpublic grade school must comply with other minimum standards established by law and administrative rules adopted pursuant to the law and the nonpublic grade school must show progress toward reaching a grade one through grade six program.

2001 Acts, ch 56, §11; 2001 Acts, ch 159, §1 - 3
 Unnumbered paragraph 1 amended
 Subsection 7, paragraph c amended
 Subsection 10, unnumbered paragraph 2 amended
 Subsection 10, paragraph b amended

256.40 through 256.43 Repealed by 2001 Acts, ch 159, § 18.

SUBCHAPTER II
 PARTICIPATION IN INTERSCHOLASTIC
 ACTIVITIES

Former subchapter III renumbered as II

SUBCHAPTER III
 LIBRARIES AND INFORMATION
 SERVICES

PART 1

GENERAL PROVISIONS

Former subchapter IV renumbered as III

256.51 Division of libraries and information services — duties and responsibilities.

1. The division of libraries and information services is established within the department of education. The division shall do all of the following:

a. Determine policy for providing information service to the three branches of state government and to the legal and medical communities in this state.

b. Coordinate a statewide interregional inter-library loan and information network among libraries in this state and support activities which increase cooperation among all types of libraries.

c. Establish and administer a program for the collection and distribution of state publications to depository libraries.

d. Develop and adopt, in conjunction with the library service areas, long-range plans for the continued improvement of library services and which will explore or broaden the information mission in the state. To insure that the concerns of all types of libraries are addressed, the division shall establish a long-range planning committee to review and evaluate progress and report findings and recommendations to the division and to the trustees of the library service areas at an annual meeting.

e. Develop, in consultation with the library service areas and the area education agency media centers, a biennial unified plan of service and service delivery for the division of libraries and information services.

f. Establish and administer a statewide continuing education program for librarians and trustees.

g. Give to libraries advice and counsel in specialized areas which may include, but are not limited to, building construction and space utilization, children’s services, and technological developments.

h. Obtain from libraries reports showing the condition, growth, and development of services provided and disseminate this information in a timely manner to the citizens of Iowa.

i. Establish and administer certification guidelines for librarians not covered by other accrediting agencies.

j. Foster public awareness of the condition of libraries in Iowa and of methods to improve library services to the citizens of the state.

k. Establish and administer standards for state agency libraries, the library service areas, and public libraries.

2. The division may do all of the following:

a. Enter into interstate library compacts on behalf of the state of Iowa with any state which legally joins in the compacts as provided in section 256.70.

b. Receive and expend money for providing programs and services. The division may receive, accept, and administer any moneys appropriated or granted to it, separate from the general library fund, by the federal government or by any other public or private agency.

c. Accept gifts, contributions, bequests, endowments, or other moneys, including but not limited to the Westgate endowment fund, for any or all purposes of the division. Interest earned on moneys accepted under this paragraph shall be credited to the fund or funds to which the gifts, contributions, bequests, endowments, or other moneys have been deposited, and is available for any or all purposes of the division. The division shall report annually to the director and the general assembly regarding the gifts, contributions, bequests, endowments, or other moneys accepted pursuant to this paragraph and the interest earned on them.

2001 Acts, ch 158, §12

Subsection 1, paragraphs d, e, and k amended

PART 2

LIBRARY SERVICE AREAS

256.60 Library service areas established — purposes.

Library service areas are established as provided in section 256.61 to provide supporting services to libraries, including, but not limited to, consulting, continuing education, and interlibrary loan and reference services, to assure consistency of service statewide, and to encourage local financial support for library services.

2001 Acts, ch 158, §13

Section amended

256.61 Library service areas and boards of trustees — appointment — terms.

1. Seven library service areas shall serve and represent seven geographic regions consisting of the following counties:

a. The southwestern area shall serve and represent the counties of Adair, Adams, Audubon, Cass, Clarke, Decatur, Fremont, Guthrie, Harrison, Lucas, Mills, Montgomery, Page, Pottawattamie, Ringgold, Shelby, Taylor, Union, and Wayne.

b. The northwestern area shall serve and represent the counties of Buena Vista, Calhoun, Car-

roll, Cherokee, Clay, Crawford, Dickinson, Emmet, Ida, Lyon, Monona, O'Brien, Osceola, Palo Alto, Plymouth, Pocahontas, Sac, Sioux, and Woodbury.

c. The north central area shall serve and represent the counties of Cerro Gordo, Floyd, Franklin, Hamilton, Hancock, Hardin, Humboldt, Kosuth, Mitchell, Webster, Winnebago, Worth, and Wright.

d. The central area shall serve and represent the counties of Boone, Dallas, Greene, Jasper, Madison, Marion, Marshall, Polk, Story, and Warren.

e. The southeastern area shall serve and represent the counties of Appanoose, Davis, Des Moines, Henry, Jefferson, Keokuk, Lee, Louisa, Mahaska, Monroe, Muscatine, Scott, Van Buren, Wapello, and Washington.

f. The east central area shall serve and represent the counties of Benton, Cedar, Clinton, Iowa, Jackson, Johnson, Jones, Linn, Poweshiek, and Tama.

g. The northeastern area shall serve and represent the counties of Allamakee, Black Hawk, Bremer, Buchanan, Butler, Chickasaw, Clayton, Delaware, Dubuque, Fayette, Grundy, Howard, and Winneshiek.

2. Each area shall have a board of trustees composed of seven members, who shall be appointed as follows:

a. One member shall be appointed mutually by the area education agency media divisions located within the boundaries of the library service area.

b. One member shall be appointed mutually by the boards of trustees of the public libraries located within the boundaries of the library service area.

c. One member shall be appointed mutually by librarians employed by public libraries located within the boundaries of the library service area.

d. One member shall be appointed mutually by the boards of trustees of the community colleges located within the boundaries of the library service area.

e. One member shall be appointed by the commission of libraries to represent library patrons residing within the boundaries of the library service area.

f. Two members shall be appointed by the commission of libraries to represent the public at large residing within the boundaries of the library service area.

3. All appointments shall comply with sections 69.16 and 69.16A.

4. The members of each library service area board shall be appointed to four-year, staggered terms of office. A term shall be effective on the first of July of the year of appointment and a vacancy shall be filled for the unexpired term in the same manner as the original appointment.

5. The members of a board shall not receive

compensation, but shall be reimbursed for their actual and necessary expenses incurred in the performance of their official duties. The expenses of the board members shall be paid from the appropriation to the library service areas.

6. Each board shall elect a chairperson and vice chairperson annually from among its membership. A board shall meet at the call of its chairperson or upon written request of a majority of its membership. Four members constitute a quorum. The concurrence of a majority of the members of a board is required to determine any matter relating to its duties.

7. The commission of libraries shall adopt rules providing for the coordination of appointments made to the board of trustees in accordance with this section.

2001 Acts, ch 158, §14
Expiration of terms of elected regional library trustees on July 1, 2001;
2001 Acts, ch 158, §39
Section stricken and rewritten

256.62 through 256.65 Repealed by 2001 Acts, ch 158, § 40.

256.66 Powers and duties of regional trustees.

In carrying out the purposes of section 256.60, each board of trustees:

1. Shall appoint and evaluate a qualified administrator who shall have a master's degree in librarianship from a program of study accredited by the American library association and who may be terminated for good cause.

2. Subject to the approval of the annual plan of service by the director of the department of education, may receive and expend state appropriated funds.

3. May receive and expend other funds and receive and expend gifts of real property, personal property or mixed property, and devises and bequests including trust funds; may take title to the property; may execute deeds and bills of sale for the conveyance of the property; and may expend the funds received from the gifts.

4. May accept and administer trusts and may authorize nonprofit foundations acting solely for the support of the library service area to accept and administer trusts deemed by the board to be beneficial to the operation of the library service area. Notwithstanding section 633.63, the board and the nonprofit foundation may act as trustees in these instances. The board shall require that moneys belonging to a nonprofit foundation be audited annually.

5. May contract with libraries, library agencies, private corporations or individuals to improve library service.

6. May acquire land and construct or lease facilities to carry out the provisions of this part.

7. Shall provide consultation and educational programs for library staff and trustees concerning

all facets of library management and operation.

8. Shall provide interlibrary loan and information services throughout the area and across area lines according to the standards developed by the commission of libraries.

9. Shall develop and adopt, in cooperation with other members of the library service area and the director of the department of education, a long-range plan for the area.

10. Shall prepare, in cooperation with all members of the library service area and the director of the department of education, an annual plan of service.

11. Shall provide data and prepare reports as directed by the director of the department of education.

12. Shall encourage governmental subdivisions to maintain local financial support for the operating expenses of local libraries.

13. Shall assume all of the outstanding obligations of the regional library and be liable for and recognize, assume, and carry out all valid contracts and obligations of the regional library that the library service area replaces. Each regional library in existence prior to July 1, 2001, shall transfer its assets and title to any real estate owned by the regional library to the library service area that replaces the regional library.

14. May perform other acts necessary to carry out its powers and duties under this part.

2001 Acts, ch 158, §15, 16
Subsections 4, 6, and 8 - 10 amended
NEW subsection 13
Subsection 14 amended

256.67 Duties of the area administrator.

An area administrator shall:

1. Act as administrator and executive secretary of the region in accordance with the objectives and policies adopted by the area board of trustees and with the intent of this chapter.

2. Organize, staff, and administer the library service area so as to render the greatest benefit to libraries and information services in the area.

3. Advise and counsel with the area board of trustees and individual libraries in all matters pertaining to the improvement of library services in the library service area.

4. Cooperate with other members of the library service area, the state library of Iowa and representatives of the Iowa library community in considering and developing plans for the improvement of library services in Iowa.

5. Carry out the policies of the board of trustees not inconsistent with state law.

2001 Acts, ch 158, §17
Section amended

256.67A Insurance eligibility.

Personnel employed by a library service area shall be considered state employees for purposes of eligibility for receiving employee health and dental insurance as provided to state employees by the department of personnel. If a library ser-

vice area elects to participate in a state employee health and dental insurance program, the library service area shall continue to pay the costs of employee participation in a program from funds appropriated for purposes of the library service areas by the general assembly.

2001 Acts, ch 158, §18
Section amended

256.68 Distribution and administration of funds.

1. Funds appropriated for the purpose of carrying out this part shall be distributed equally to the library service area boards by the commission of libraries.

2. In addition to funds received under subsection 1, a library service area board of trustees may individually or cooperatively apply to the commission of libraries for available grants.

2001 Acts, ch 158, §19 – 21
Section amended

256.69 Local financial support.

Commencing July 1, 1977, each city within its corporate boundaries and each county within the unincorporated area of the county shall levy a tax of at least six and three-fourths cents per thousand dollars of assessed value on the taxable property or at least the monetary equivalent thereof when all or a portion of the funds are obtained from a source other than taxation, for the purpose of providing financial support to the public library which provides library services within the respective jurisdictions.

Public library funding study; report to general assembly; 2001 Acts, ch 158, §38
Section not amended; footnote added

SUBCHAPTER IV

PUBLIC BROADCASTING

Former subchapter V renumbered as IV

CHAPTER 256A

CHILD DEVELOPMENT ASSISTANCE

256A.4 Family support programs.

1. The board of directors of each school district may develop and offer a program which provides outreach and incentives for the voluntary participation of expectant parents and parents of children in the period of life from birth through age five, who reside within district boundaries, in educational family support experiences designed to assist parents in learning about the physical, mental, and emotional development of their children. A district providing a family support program, which seeks additional funding under sections 294A.13 through 294A.16, shall meet the requirements of this section and the program shall be subject to approval by the department of education. A board may contract with another school district or public or private nonprofit agency for provision of the approved program or program site.

A family support program shall meet multicultural gender fair guidelines. The program shall encourage parents to be aware of practices that may affect equitable development of children. The program shall include parents in the planning, implementation, and evaluation of the program. A program shall be designed to meet the needs of the residents of the participating district and may use unique approaches to provide for those needs. The goals of a family support program shall include, but are not limited to, the following:

a. Family involvement as a key component of school improvement with an emphasis on communication and active family participation in family support programming.

b. Family participation in the planning and decision-making process for the program and en-

couragement of long-term parental involvement in their children's education.

c. Meeting the educational and developmental needs of expectant parents and parents of young children.

d. Developmentally appropriate activities for children that include those skills necessary for adaptation to both the home and school environments.

2. The department of education shall develop guidelines for family support programs. Program components may include, but are not limited to, all of the following:

a. Instruction, techniques, and materials designed to educate parents about the physical, mental, character, and emotional development of children.

b. Instruction, techniques, and materials designed to enhance the skills of parents in assisting in their children's learning and development.

c. Assistance to parents about learning experiences for both children and parents.

d. Activities, such as developmental screenings, designed to detect children's physical, mental, emotional, or behavioral problems that may cause learning problems and referrals to appropriate agencies, authorities, or service providers.

e. Activities and materials designed to encourage parents' and children's self-esteem and to enhance parenting skills and both parents' and children's appreciation of the benefits of education.

f. Information on related community resources, programs, or activities.

g. Role modeling and mentoring techniques for families of children who meet one or more of the

criteria established for the definition of at-risk children by the child development coordinating council.

3. Family support programs shall be provided by family support program educators who have completed a minimum of thirty clock hours of an approved family support preservice or in-service training program and meet one of the following requirements:

a. The family support program educator is licensed in elementary education, early childhood education, early childhood special education, home economics, or consumer and homemaking education, or is licensed or certified in occupational child care services and has demonstrated an ability to work with young children and their parents.

b. The family support program educator has achieved child development associate recognition in early childhood education, has completed programming in child development and nursing, and has demonstrated an ability to work with young

children and their parents.

c. The family support program educator has completed sixty college credit hours and possesses two years of experience in a program working with young children and their parents.

d. The family support program educator possesses five years of experience in a program working with young children and their parents.

4. Each district shall maintain a separate account within the district budget for moneys allocated for family support programs. A district may receive moneys from state and federal sources, and may solicit funds from private sources, for deposit into the account.

5. A district shall coordinate a family support program with district special education and vocational education programs and with any related services or programs provided by other state, federal, or private nonprofit agencies.

2001 Acts, ch 159, §4

Subsection 1, unnumbered paragraph 2 amended

CHAPTER 256B

SPECIAL EDUCATION

256B.15 Reimbursement for special education services.

1. The state board of education in conjunction with the department of education shall develop a program to utilize federally funded health care programs, except the federal medically needy program for individuals who have a spend-down, to share in the costs of services which are provided to children requiring special education.

2. The department of education shall designate an area education agency to develop a system for collecting the information necessary to implement procedures for billing and collecting the costs of the services. The area education agency shall begin to develop the system immediately. The area education agency shall consult with and work jointly with state agencies and federal agencies to determine procedures and standards which shall be initiated by all area education agencies to qualify for receipt of benefits under federal programs.

3. The department of education, in conjunction with the area education agency, shall determine those specific services which are covered by federally funded health care programs, which shall include, but not be limited to, physical therapy, audiology, speech language therapy, and psychological evaluations. The department shall also determine which other special services may be subject to reimbursement and the qualifications necessary for personnel providing those services. If it is determined that services are required from other service providers, these providers shall be reimbursed for those services.

4. All services referred to in subsection 1 shall

be initially funded by the area education agency and shall be provided regardless of subsequent subrogation collections. The area education agency shall make a claim for reimbursement to federally funded health care programs.

5. Not later than July 1, 1988, the area education agency designated by the department of education shall have developed the program for collecting for the services provided. The program shall be distributed to all of the area education agencies in the state. All area education agencies shall begin collecting the information on July 1, 1988.

6. Effective November 1, 1988, all area education agencies in the state shall participate in the program and begin billing for and collecting for the covered services and shall bill for services provided retroactive to July 1, 1988. Retroactive Title XIX billing is contingent upon state plan approval. Nothing contained in this section shall be construed to allow nonlicensed individuals to perform services which otherwise require licenses under the laws of this state or to allow licensed providers to perform services outside their scope of practice.

7. *a.* The treasurer of the state shall credit receipts received under this section to the department of human services to pay contractual fees incurred by the department to maximize federal funding for special education services. All remaining receipts in excess of the amount necessary to pay contractual fees shall be credited to the department of human services medical assistance account.

b. The area education agencies shall, after determining the administrative costs associated

with the implementation of medical assistance reimbursement for the eligible services, be permitted to retain up to twenty-five percent of the federal portion of the total amount reimbursed to pay for the administrative costs. This limitation does not apply to medical assistance reimbursement for services provided by an area education agency under part C of the federal Individuals with Disabilities Education Act. Funds received under this section shall not be considered or included as part of the area education agencies' budgets when calculating funds that are to be received by area education agencies during a fiscal year.

8. Students or their parents or guardians covered by a federal health care program shall pro-

vide health care information to an area education agency or local school district.

9. The department of education and the department of human services shall adopt rules to implement this section to be effective immediately upon filing with the administrative rules coordinator, or at a stated date prior to indexing and publication, or at a stated date less than thirty-five days after filing, indexing, and publication.

10. The department of human services shall offer assistance to the area education agencies in the identification of children eligible for reimbursement for services under this section.

2001 Acts, ch 41, §1, 2
Subsection 7, paragraph b amended

CHAPTER 256C

FAMILY RESOURCE CENTER DEMONSTRATION PROGRAM

Repealed by 2001 Acts, ch 181, §26

CHAPTER 256D

IOWA EARLY INTERVENTION AND SCHOOL IMPROVEMENT TECHNOLOGY BLOCK GRANT PROGRAMS

256D.6 Distribution of school improvement technology block grant funds.

1. From the moneys appropriated in section 256D.5, subsection 2, other than the moneys allocated in subsection 2 of this section, for each fiscal year in which moneys are appropriated, the amount of moneys allocated to school districts shall be in the proportion that the basic enrollment of a district bears to the sum of the basic enrollments of all school districts in the state for the budget year. However, except as provided in subsection 6, a district shall not receive less than ten thousand dollars in a fiscal year. The Iowa braille and sight saving school, the state school for the deaf, and the Price laboratory school at the university of northern Iowa shall annually certify their basic enrollments to the department of education by October 1. The department of human services shall certify the average student yearly enrollments of the institutions under department of human services control as provided in section 218.1, subsections 1 through 3, 5, 7, and 8, to the department of education by October 1.

2. From the moneys appropriated in section 256D.5, subsection 2, for each fiscal year in which moneys are appropriated, the sum of one hundred fifty thousand dollars shall be divided among the area education agencies based upon each area education agency's percentage of the total full-time equivalent elementary and secondary teachers employed in the school districts in this state. An area education agency may contract with an appropriate accredited institution of higher edu-

cation in Iowa to provide staff development and training in accordance with section 256D.7.

3. For each year in which an appropriation is made to the school improvement technology block grant program, the department of education shall notify the department of revenue and finance of the amount to be paid to each school district and area education agency based upon the distribution plan set forth for the appropriation made pursuant to this section. The allocation to each school district and area education agency under this section shall be made in one payment on or about October 15 of the fiscal year in which the appropriation is made, taking into consideration the relative budget and cash position of the state resources.

4. Payments made to school districts and area education agencies under this section are miscellaneous income for purposes of chapter 257. Moneys received under this section shall not be commingled with state aid payments made under sections 257.16 and 257.35 to a school district or area education agency and shall be accounted for by the local school district or area education agency separately from state aid payments.

5. Moneys received under this section shall not be used for payment of any collective bargaining agreement or arbitrator's decision negotiated or awarded under chapter 20.

6. For purposes of this section and section 256D.8, "school district" means a school district, the Iowa braille and sight saving school, the state school for the deaf, the Price laboratory school at the university of northern Iowa, and the institu-

tions under the control of the department of human services as provided in section 218.1, subsections 1 through 3, 5, 7, and 8. However, notwithstanding subsection 1, the amount of moneys allocated to the institutions under the control of the department of human services as provided in section 218.1, subsections 1, 2, 3, and 5, shall be a total of not more than twenty thousand dollars for each fiscal year, to be distributed proportionately between the four institutions by the department of education.

Technology services for accredited nonpublic school students; appropriation and allocation of funds; 2001 Acts, ch 189, §5, 14, 15
Section not amended; footnote added

256D.7 School improvement technology planning.

1. Commencing with the fiscal year beginning July 1, 2001, each school district shall include, as a component of the annual report submitted to the department of education in accordance with section 256.7, subsection 21, paragraphs “a” and “c”, a progress report on the use of technology. Licensed professional staff of the district, including both teachers and administrators, shall be responsible for implementation of technology integration throughout the district. Technology integration in the classroom shall, at a minimum, focus on the attainment of student achievement goals on academic and other core indicators, utilize the district’s interconnectivity with the Iowa communications network, and demonstrate the use of technology to improve student achievement.

2. Prior to receiving funds under this chapter, each area education agency shall develop a plan to assist school districts in the development of a technology planning process to meet the purposes of the school improvement technology block grant program. The plan shall describe how the area education agency intends to support school districts with instructional technology staff development and training. The department shall approve each plan prior to the disbursement of funds. An area education agency needs to develop only one plan and send it to the department of education while this chapter is effective. An area education agency may submit a plan that meets the requirements of chapter 295, Code 2001. An annual progress report shall be submitted to the department of education.

3. Prior to receiving funds pursuant to section 256D.5, subsection 2, the Iowa braille and sight saving school, the state school for the deaf, and the Price laboratory school at the university of northern Iowa shall each submit to the state board of regents and the department of education a technology plan that supports and improves student achievement, demonstrates how technology will be utilized to improve student achievement, and includes an evaluation component. The schools listed in this subsection need to develop only one plan each to send to the state board of regents and the department of education while this chapter is effective. An annual progress report shall be sub-

mitted to the state board of regents and the department of education.

4. Prior to receiving funds pursuant to section 256D.5, subsection 2, the institutions under the control of the department of human services as provided in section 218.1, subsections 1 through 3, 5, 7, and 8, shall each submit to the departments of education and human services a technology plan that supports and improves student achievement, demonstrates the manner in which technology will be utilized to improve student achievement, and includes an evaluation component. Each institution developing a plan under this subsection needs to develop only one plan to send to the departments of education and human services while this chapter is effective. Each institution shall submit an annual progress report to the departments of education and human services.

2001 Acts, ch 159, §5
Subsection 1 amended

256D.8 School improvement technology block grant expenditures.

1. Except as provided in subsection 2, a school district shall expend funds received pursuant to section 256D.5, subsection 2, for the acquisition, lease, lease-purchase, installation, and maintenance of instructional technology equipment, including hardware and software, materials and supplies related to instructional technology, and staff development and training related to instructional technology, and shall establish priorities for the use of the funds. However, funds received by a school district pursuant to section 256D.5, subsection 2, shall not be expended to add a full-time equivalent position or otherwise increase staffing, unless the school district expends not more than ten percent of the funds received to employ or enter into a contract with information technology specialists to provide technical consulting and integration of technology in curriculum and instruction to advance student achievement.

2. A school district may expend up to two-thirds of the funds received annually pursuant to section 256D.5, subsection 2, for any of the purposes described in section 256D.2, including for the employment of additional licensed instructional staff.

3. Funds received by an area education agency pursuant to section 256D.6, subsection 2, shall be expended for the costs related to supporting school districts within the area served with technology planning and equipment, including hardware and software, materials and supplies related to instructional technology and the lease or lease-purchase agreements for those items, employment of or contracting with information technology specialists to provide technical consulting and integration of technology in curriculum and instruction, and staff development and training related to instructional technology. A consortium of area education agencies may cooperatively engage in any of the activities allowed by this section.

2001 Acts, ch 158, §22
Subsection 3 amended

CHAPTER 256E

BEGINNING TEACHER INDUCTION PROGRAMS

Repealed by 2001 Acts, ch 161, §20; see chapter 284

CHAPTER 257

FINANCING SCHOOL PROGRAMS

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.

Replacement taxes under chapter 437A shall be regarded as property taxes for purposes of this chapter.

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 to the rate of four dollars and ninety cents per thousand dollars of assessed valuation the first succeeding year, five dollars and fifteen cents per thousand dollars of assessed valuation the second succeeding year, and five dollars and forty cents per thousand dollars of assessed valuation the third succeeding year and each year thereafter.

For purposes of this section, a reorganized school district is one which absorbs 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 is initiated by a vote of the board of directors or jointly by the affected boards of directors to take effect on or after July 1, 2002, and on or before July 1, 2006. 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 to take effect on or after July 1, 2002, and on or before July 1, 2006, shall certify the date and the nature of the action taken to the department of education by January 1 of the year in which the reorganization or dissolution takes effect.

3. *Railway corporations.* For purposes of section 257.1, the "amount per pupil of foundation property tax" does not include the tax levied under subsection 1 or 2 on the property of a railway corporation, or on its trustee if the corporation has been declared bankrupt or is in bankruptcy proceedings.

2001 Acts, ch 126, §1 - 3
Subsection 2 amended
Subsection 3 stricken and former subsection 4 amended and renumbered as 3

257.4 Additional property tax.

1. *Computation of tax.* A school district shall cause an additional property tax to be levied each year. The rate of the additional property tax levy in a school district shall be determined by the department of management and shall be calculated to raise the difference between the combined district cost for the budget year and the sum of the products of the regular program foundation base per pupil times the weighted enrollment in the district and the special education support services foundation base per pupil times the special education support services weighted enrollment in the district.

2. *Supplemental aid.* However, if the rate of the additional property tax levy determined under subsection 1 with the application of section 257.15 for a budget year for a reorganized school district is higher than the rate of additional property tax levy determined under subsection 1 with the application of section 257.15 for the year previous to

the reorganization for a school district that had a certified enrollment of less than six hundred and that was within the school districts affected by the reorganization as defined in section 275.1, the department of management shall reduce the rate of the additional property tax levy in the portion of the reorganized district where the new rate is higher, to the rate that was levied in that portion of the district during the year preceding the reorganization, for a five-year period. The department of management shall include in the state aid payments made to each reorganized school district under section 257.16 during each of the first five years of existence of the reorganized district as supplemental aid, moneys equal to the reduction in property tax revenues made under this subsection. For the budget year beginning July 1, 1991, the base year calculation shall be made using chapter 442, Code 1991.

For purposes of this section, a reorganized school district is one in which action to bring about a reorganization 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 will take 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.

3. *Application of tax.* No later than June 15 of each year, the department of management shall notify the county auditor of each county the amount, in dollars and cents per thousand dollars of assessed value, of the additional property tax levy in each school district in the county. A county auditor shall spread the additional property tax levy for each school district in the county over all taxable property in the district.

2001 Acts, ch 126, §4, 12
Subsection 3 amended

257.6 Enrollment.

1. *Actual enrollment.* Actual enrollment is determined on the third Friday of September in each year and includes all of the following:

a. Resident pupils who were enrolled in public schools within the district in grades kindergarten through twelve and including prekindergarten pupils enrolled in special education programs.

b. Full-time equivalent resident pupils of high school age for which the district pays tuition to attend an Iowa community college.

c. Shared-time and part-time pupils of school age enrolled in public schools within the district, irrespective of the districts in which the pupils reside, in the proportion that the time for which they are enrolled or receive instruction for the school year is to the time that full-time pupils carrying a normal course schedule, at the same grade level,

in the same school district, for the same school year, are enrolled and receive instruction. Tuition charges to the parent or guardian of a shared-time or part-time nonresident pupil shall be reduced by the amount of any increased state aid received by the district by the counting of the pupil.

d. Eleventh and twelfth grade nonresident pupils who were residents of the district during the preceding school year and are enrolled in the district until the pupils graduate. Tuition for those pupils shall not be charged by the district in which the pupils are enrolled and the requirements of section 282.18 do not apply.

e. Resident pupils receiving competent private instruction from a licensed practitioner provided through a public school district pursuant to chapter 299A shall be counted as six-tenths of one pupil.

f. Resident pupils receiving competent private instruction under dual enrollment pursuant to chapter 299A shall be counted as one-tenth of one pupil.

Pupils attending a university laboratory school are not counted in the actual enrollment of a school district, but the laboratory school shall report their enrollment directly to the department of education.

A school district shall certify its actual enrollment to the department of education by October 1 of each year, and the department shall promptly forward the information to the department of management.

The department of management shall adjust the enrollment of the school district for the audit year based upon reports filed under section 11.6, and shall further adjust the budget of the second year succeeding the audit year for the property tax and state aid portions of the reported differences in enrollments for the year succeeding the audit year.

2. *Basic enrollment.* Basic enrollment for a budget year is a district's actual enrollment for the base year. Basic enrollment for the base year is a district's actual enrollment for the year preceding the base year.

3. *Additional enrollment because of special education.* A school district shall determine its additional enrollment because of special education, as defined in this section, by November 1 of each year and shall certify its additional enrollment because of special education to the department of education by November 15 of each year, and the department shall promptly forward the information to the department of management.

For the purposes of this chapter, "additional enrollment because of special education" is determined by multiplying the weighting of each category of child under section 256B.9 times the number of children in each category totaled for all categories minus the total number of children in all categories.

4. *Budget enrollment.* Budget enrollment for

the budget year is the basic enrollment for the budget year.

5. *Weighted enrollment.* Weighted enrollment is the budget enrollment plus the district's additional enrollment because of special education calculated by November 1 of the base year plus additional pupils added due to the application of the supplementary weighting.

Weighted enrollment for special education support services costs is equal to the weighted enrollment minus the additional pupils added due to the application of the supplementary weighting.

6. *Students excluded.* For the school year beginning July 1, 2001, and each succeeding school year, a student shall not be included in a district's enrollment for purposes of this chapter or considered an eligible pupil under chapter 261C if the student meets all of the following:

a. Was eligible to receive a diploma with the class in which they were enrolled and that class graduated in the previous school year.

b. Continues enrollment in the district to take courses either provided by the district, offered by community colleges under the provisions of section 257.11, or to take courses under the provisions of chapter 261C.

2001 Acts, ch 159, §6 - 8; 2001 Acts, ch 176, §32, 33
 Subsection 3, unnumbered paragraph 1 amended
 Subsection 5, unnumbered paragraph 1 amended
 NEW subsection 6

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, 2001, is four percent. The state percent of growth for the budget year beginning July 1, 2002, is four 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. *Alternate allowable growth — gifted and talented programs.* Notwithstanding the calculation in subsection 2, the department of management shall calculate the regular program allowable growth for the budget year beginning July

1, 1999, by multiplying the state percent of growth for the budget year by the regular program state cost per pupil for the base year, and add to the resulting product thirty-eight dollars. For purposes of determining the amount of a budget adjustment as defined in section 257.14, for a school district which calculated allowable growth for the budget year beginning July 1, 1999, pursuant to this subsection, thirty-eight dollars shall be subtracted from the school district's regular program cost per pupil for the budget year beginning July 1, 1999, prior to determining the amount of the adjustment.

4. *Alternate allowable growth — regular program state cost.* A school district which calculated allowable growth for the budget year beginning July 1, 1999, pursuant to the provisions of subsection 3, shall calculate allowable growth pursuant to the provisions of subsection 2 for the school budget year beginning July 1, 2000, and succeeding budget years, utilizing a regular program state cost per pupil figure which incorporates the thirty-eight dollar increase in regular program allowable growth calculated for the budget year beginning July 1, 1999.

5. *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.

6. *Alternate allowable growth — definitions.* For budget years beginning July 1, 2000, and subsequent budget years, references to the terms "allowable growth", "regular program state cost per pupil", and "regular program district cost per pupil" shall mean those terms as calculated for those school districts that calculated regular program allowable growth for the school budget year beginning July 1, 1999, with the additional thirty-eight dollars.

2001 Acts, ch 2, §1, 2
 Subsection 1 amended

257.10 District cost per pupil — district cost.

1. *Regular program district cost per pupil for 1991-1992.* For the budget year beginning July 1, 1991, in order to determine the regular program district cost per pupil for a district, the department of management shall divide the product of the regular program district cost per pupil of the district for the base year, as regular program district cost per pupil would have been calculated under section 442.9, Code 1989, multiplied by its budget enrollment for the base year as budget enrollment would have been calculated under section 442.4, Code 1989, plus the amount added to

district cost pursuant to section 442.21, Code 1989, for each school district, by the budget enrollment of the school district for the budget year beginning July 1, 1990, calculated under section 257.6, subsection 4, as if section 257.6, subsection 4, had been in effect for that budget year. The regular program district cost per pupil for the budget year beginning July 1, 1991, is the amount calculated by the department of management under this subsection plus the allowable growth amount calculated for regular program state cost per pupil, except that if the regular program district cost per pupil for the budget year calculated under this subsection in any school district exceeds one hundred ten percent of the regular program state cost per pupil for the budget year, the department of management shall reduce the regular program district cost per pupil of that district for the budget year to an amount equal to one hundred ten percent of the regular program state cost per pupil for the budget year, and if the regular program district cost per pupil for the budget year calculated under this subsection in any school district is less than the regular program state cost per pupil for the budget year, the department of management shall increase the regular program district cost per pupil of that district to an amount equal to the regular program state cost per pupil for the budget year.

2. *Regular program district cost per pupil for 1992-1993 and succeeding years.*

a. For the budget year beginning July 1, 1992, and succeeding budget years, the regular program district cost per pupil for each school district for a budget year is the regular program district cost per pupil for the base year plus the regular program allowable growth for the budget year except as otherwise provided in this subsection.

b. If the regular program district cost per pupil of a school district for the budget year under paragraph "a" exceeds one hundred five percent of the regular program state cost per pupil for the budget year and the state percent of growth for the budget year is greater than two percent, the regular program district cost per pupil for the budget year for that district shall be reduced to one hundred five percent of the regular program state cost per pupil for the budget year. However, if the difference between the regular program district cost per pupil for the budget year and the regular program state cost per pupil for the budget year is greater than an amount equal to two percent multiplied by the regular program state cost per pupil for the base year, the regular program district cost per pupil for the budget year shall be reduced by the amount equal to two percent multiplied by the regular program state cost per pupil for the base year.

3. *Special education support services district cost per pupil for 1991-1992.* For the budget year beginning July 1, 1991, for the special education support services district cost per pupil, the department of management shall divide the approved

budget of each area education agency for special education support services for that year approved by the state board of education, under section 273.3, subsection 12, by the total of the weighted enrollment for special education support services in the area for that budget year.

The special education support services district cost per pupil for each school district in an area for the budget year is the amount calculated by the department of management under this subsection.

4. *Special education support services district cost per pupil for 1992-1993 and succeeding years.* For the budget year beginning July 1, 1992, and succeeding budget years, the special education support services district cost per pupil for the budget year is the special education support services district cost per pupil for the base year plus the special education support services allowable growth for the budget year.

Notwithstanding the special education support services district cost per pupil for the budget year beginning July 1, 1991, calculated under subsection 3, for area education agencies that have fewer than three and five-tenths public school pupils per square mile, the special education support services district cost per pupil for the budget year beginning July 1, 1991, is one hundred forty-seven dollars.

5. *Combined district cost per pupil.* The combined district cost per pupil for a school district is the sum of the regular program district cost per pupil and the special education support services district cost per pupil. Combined district cost per pupil does not include additional allowable growth added for school districts that have a negative balance of funds raised for special education instruction programs, additional allowable growth granted by the school budget review committee for a single school year, or additional allowable growth added for programs for dropout prevention.

6. *Regular program district cost.* Regular program district cost for a school district for a budget year is equal to the regular program district cost per pupil for the budget year multiplied by the budget enrollment for the budget year.

7. *Special education support services district cost.* Special education support services district cost for a school district for a budget year is equal to the special education support services district cost per pupil for the budget year multiplied by the special education support services weighted enrollment for the district for the budget year. If the special education support services district cost for a school district for a budget year is less than the special education support services district cost for that district for the base year, the department of management shall adjust the special education support services district cost for that district for the budget year to equal the special education support services district cost for the base year.

8. *Combined district cost.* Combined district cost is the sum of the regular program district cost per pupil multiplied by the weighted enrollment and the special education support services district cost, plus the additional district cost allocated to the district to fund media services and educational services provided through the area education agency.

A school district may increase its combined district cost for the budget year to the extent that an excess tax levy is authorized by the school budget review committee.

Exclusion of technology expenditures for accredited nonpublic schools from computation of district cost; 2001 Acts, ch 189, §14
Section not amended; footnote added

257.11 Supplementary weighting plan.

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. District-to-district sharing.

a. In order to provide additional funds for school districts which send their resident pupils to another school district, which jointly employ and share the services of teachers under section 280.15, or which use the services of a teacher employed by another school district, a supplementary weighting plan for determining enrollment is adopted.

b. 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, 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 forty-eight hundredths of the percentage of the pupil's school day during which the pupil attends classes in another district, 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.

c. Pupils attending class for all or a substantial portion of a school day pursuant to a whole grade sharing agreement executed under sections 282.10 through 282.12 shall be eligible for supplementary weighting pursuant to this subsection as follows:

(1) A school district which was participating in a whole grade sharing arrangement during the budget year beginning July 1, 2001, and which adopts a resolution jointly with the other affected boards to study the question of undergoing a reorganization or dissolution to take effect on or before July 1, 2006, shall receive a weighting of one-tenth of the percentage of the pupil's school day during

which the pupil attends classes in another district, 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 district shall be eligible for supplementary weighting pursuant to this subparagraph for a maximum of two years. Receipt of supplementary weighting for a second year shall be conditioned upon submission of information resulting from the study to the school budget review committee indicating progress toward the objective of reorganization on or before July 1, 2006.

(2) A school district which was not participating in a whole grade sharing arrangement during the budget year beginning July 1, 2001, which executes a whole grade sharing agreement pursuant to sections 282.10 through 282.12 for the budget year beginning July 1, 2003, and which adopts a resolution jointly with the other affected boards to study the question of undergoing a reorganization or dissolution to take effect on or before July 1, 2006, shall receive a weighting of one-tenth of the percentage of the pupil's school day during which the pupil attends classes in another district, 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 district shall be eligible for supplementary weighting pursuant to this subparagraph for a maximum of three years. Receipt of supplementary weighting for a second and third year shall be conditioned upon submission of information resulting from the study to the school budget review committee indicating progress toward the objective of reorganization on or before July 1, 2006.

3. District-to-community college sharing.

a. In order to provide additional funds for school districts which send their resident pupils to a community college for classes, a supplementary weighting plan for determining enrollment is adopted.

b. If the school budget review committee certifies to the department of management that the class would not otherwise be implemented without the assignment of additional weighting, pupils attending a community college-offered class or attending a class taught by a community college-employed teacher are assigned a weighting of forty-eight hundredths of the percentage of the pupil's school day during which the pupil attends class in the community college or attends a class taught by a community college-employed teacher. The following requirements shall be met for the purposes of assigning an additional weighting for classes offered through a sharing agreement between a school district and community college. The class must be:

(1) Supplementing, not supplanting, high school courses.

(2) Included in the community college catalog

or an amendment or addendum to the catalog.

(3) Open to all registered community college students, not just high school students.

(4) For college credit and the credit must apply toward an associate of arts or associate of science degree, or toward an associate of applied arts or associate of applied science degree, or toward completion of a college diploma program.

(5) Taught by a teacher meeting community college licensing requirements.

(6) Taught utilizing the community college course syllabus.

(7) Of the same quality as a course offered on a community college campus.

4. *At-risk programs and alternative schools.*

a. In order to provide additional funding to school districts for programs serving at-risk pupils and alternative school pupils in secondary schools, a supplementary weighting plan for at-risk pupils is adopted. A supplementary weighting of forty-eight ten-thousandths per pupil shall be assigned to the percentage of pupils in a school district enrolled in grades one through six, as reported by the school district on the basic educational data survey for the base year, who are eligible for free and reduced price meals under the federal National School Lunch Act and the federal Child Nutrition Act of 1966, 42 U.S.C. § 1751-1785, multiplied by the budget enrollment in the school district; and a supplementary weighting of one hundred fifty-six one-hundred-thousandths per pupil shall be assigned to pupils included in the budget enrollment of the school district. Amounts received as supplementary weighting for at-risk pupils shall be utilized by a school district to develop or maintain at-risk pupils' programs, which may include alternative school programs.

b. Notwithstanding paragraph "a", a school district which received supplementary weighting for an alternative high school program for the school budget year beginning July 1, 1999, shall receive an amount of supplementary weighting for the next three school budget years as follows:

(1) For the budget year beginning July 1, 2000, the greater of the amount of supplementary weighting determined pursuant to paragraph "a", or sixty-five percent of the amount received for the budget year beginning July 1, 1999.

(2) For the budget year beginning July 1, 2001, the greater of the amount of supplementary weighting determined pursuant to paragraph "a", or forty percent of the amount received for the budget year beginning July 1, 1999.

(3) For the budget year beginning July 1, 2002, and succeeding budget years, the amount of supplementary weighting determined pursuant to paragraph "a".

If a school district receives an amount pursuant to this paragraph "b" which exceeds the amount the district would otherwise have received pursuant to paragraph "a", the department of management shall annually determine the amount of

the excess that would have been state aid and the amount that would have been property tax if the school district had generated that amount pursuant to paragraph "a", and shall include the amounts in the state aid payments and property tax levies of school districts. The department of management shall recalculate the supplementary weighting amount received each year to reflect the amount of the reduction in funding from one budget year to the next pursuant to subparagraphs (1) through (3). It is the intent of the general assembly that when weights are recalculated under this subsection, the total amounts generated by each weight shall be approximately equal.

c. If the amount to be received under paragraph "a" or "b" by a school district or a consortium of school districts is less than fifty thousand dollars and the school district or consortium received funds under section 279.51, subsection 1, paragraph "c" or "e", Code 1999, for school-based youth services during the budget year beginning July 1, 1999, such school district or consortium shall receive a total amount under this subsection of fifty thousand dollars for each of the budget years beginning July 1, 2000, and July 1, 2001. The department of management shall adjust the supplementary weighting of a school district or the school district acting as the fiscal agent for a consortium eligible under this paragraph in a manner to assure that the district or the consortium receives the total sum of fifty thousand dollars as guaranteed in this paragraph. If the consortium elects not to continue a school-based youth service program, the funds shall be distributed equally to the school districts in the consortium. This paragraph is repealed effective July 1, 2002, for budget years beginning on or after that date. To the extent possible, the total amount of moneys generated by the enactment of this subsection, including this paragraph, shall be equivalent to the amount generated under this subsection without the inclusion of this paragraph. The department of management shall adjust the weighting assigned in this subsection to reflect this intent.

5. *Regional academies.*

a. For the school budget year beginning July 1, 2002, and succeeding budget years, in order to provide additional funds for school districts in which a regional academy is located, a supplementary weighting plan for determining enrollment is adopted.

b. A school district which establishes a regional academy shall be eligible to assign its resident pupils attending classes at the academy a weighting of one-tenth of the percentage of the pupil's school day during which the pupil attends classes at the regional academy. For the purposes of this subsection, "regional academy" means an educational institution established by a school district to which multiple schools send pupils in grades seven through twelve, and may include a virtual academy. A regional academy shall include in its

curriculum advanced-level courses and may include in its curriculum vocational-technical programs. The maximum amount of additional weighting for which a school district establishing a regional academy shall be eligible is an amount corresponding to fifteen additional pupils.

6. *Shared classes delivered over the Iowa communications network.* A pupil attending a class in which students from one or more other school districts are enrolled and which is taught via the Iowa communications network is not deemed to be attending a class in another school district or in a community college for the purposes of this section and the school district is not eligible for supplementary weighting for that class under this section.

7. *Pupils ineligible.* A pupil eligible for the weighting plan provided in section 256B.9 is not eligible for supplementary weighting pursuant to this section. A pupil attending an alternative program or an at-risk pupils' program, including alternative high school programs, is not eligible for supplementary weighting under subsection 2.

8. *School finance appropriations report.* The department of education shall annually prepare a report regarding school finance provisions or programs receiving a standing appropriation, including supplementary weighting programs. The report shall provide information regarding amounts received or accessed by school districts pursuant to the provisions or programs, whether the amounts received represent an increase or decrease over amounts received during the previous budget year and the percentage increase or decrease, conclusions regarding the adequacy of amounts received by school districts and whether the amounts received are equitable between school districts based upon input from the school districts and analysis by the department, and the rationale for current trends being observed by the department and projections regarding possible trends in the future. The report shall be submitted to the general assembly by January 1 each year, and copies of the report shall be forwarded to the chairpersons and members of the committee on education in the senate and in the house of representatives.

2001 Acts, ch 126, §5, 6
Subsection 2, paragraph c stricken and rewritten
NEW subsection 5 and former subsections 5 – 7 renumbered as 6 – 8

257.11A Supplementary weighting and school reorganization.

1. In determining weighted enrollment under section 257.6, if the board of directors of a school district has approved a contract for sharing pursuant to section 257.11 and the school district has approved an action to bring about a reorganization to take effect on and after July 1, 2002, and on or before July 1, 2006, the reorganized school district shall include, for a period of three years following the effective date of the reorganization, additional

pupils added by the application of the supplementary weighting plan, equal to the pupils added by the application of the supplementary weighting plan in the year preceding the reorganization. For the purposes of this subsection, the weighted enrollment for the period of three years following the effective date of reorganization shall include the supplementary weighting in the base year used for determining the combined district cost for the first year of the reorganization. However, the weighting shall be reduced by the supplementary weighting added for a pupil whose residency is not within the reorganized district.

2. For purposes of this section, a reorganized district is one in which the reorganization was approved in an election pursuant to sections 275.18 and 275.20 and takes effect on or after July 1, 2002, and on or before July 1, 2006. Each district which initiates, by a vote of the board of directors or jointly by the affected boards, action to bring about a reorganization or dissolution to take effect on or after July 1, 2002, and on or before July 1, 2006, shall certify the date and the nature of the action taken to the department of education by January 1 of the year in which the reorganization or dissolution takes effect.

3. Notwithstanding subsection 1, a school district which was participating in a whole grade sharing arrangement during the budget year beginning July 1, 2001, and which received a maximum of two years of supplementary weighting pursuant to section 257.11, subsection 2, paragraph "c", shall include additional pupils added by the application of the supplementary weighting plan, equal to the pupils added by the application of the supplementary weighting plan in the year preceding the reorganization, for a period of four years following the effective date of the reorganization.

4. A school district shall be eligible for a combined maximum total of six years of supplementary weighting under the provisions of this section and section 257.11, subsection 2, paragraph "c".

2001 Acts, ch 126, §7
NEW section

257.13 On-time funding budget adjustment.

1. For the school budget year beginning July 1, 2001, and succeeding budget years, if a district's actual enrollment for the budget year, determined under section 257.6, is greater than its budget enrollment for the budget year, the district shall be eligible to receive an on-time funding budget adjustment. The adjustment shall be in an amount equal to the difference between the actual enrollment for the budget year and the budget enrollment for the budget year, multiplied by the district cost per pupil.

2. The board of directors of a school district that wishes to receive an on-time funding budget adjustment shall adopt a resolution to receive the

adjustment and notify the school budget review committee by November 1, annually. The school budget review committee shall establish a modified allowable growth in an amount determined pursuant to subsection 1.

3. If the board of directors of a school district determines that a need exists for additional funds exceeding the authorized budget adjustment for on-time funding pursuant to this section, a request for modified allowable growth based upon increased enrollment may be submitted to the school budget review committee as provided in section 257.31.

2001 Acts, ch 126, §§
Subsections 1 and 2 amended

257.14 Budget adjustment.

1. For the budget year commencing July 1, 2001, 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 school district shall be eligible to receive a budget adjustment for that district for that budget year up to an amount equal to the difference. The board of directors of a school district that wishes to receive a budget adjustment pursuant to this subsection shall, notwithstanding the public notice and hearing provisions of chapter 24 or any other provision to the contrary, within thirty days following May 9, 2001, adopt a resolution to receive the budget adjustment and immediately notify the department of management of the adoption of the resolution and the amount of the budget adjustment to be received.

2. For the budget years commencing July 1, 2002, and July 1, 2003, 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 school district shall be eligible to receive a budget adjustment for that district for that budget year up to an amount equal to the difference. The board of directors of a school district that wishes to receive a budget adjustment pursuant to this subsection shall adopt a resolution to receive the budget adjustment and shall, by April 1, annually, notify the department of management of the adoption of the resolution and the amount of the budget adjustment to be received.

3. For the budget year commencing July 1, 2004, and succeeding budget years, if the department of management determines that the regular program district cost of a school district for a budget year is less than one hundred one percent of the regular program district cost for the base year for that school district, a district shall be eligible

for a budget adjustment corresponding to the following schedule:

a. For the budget year commencing July 1, 2004, the greater of the difference between the regular program district cost for the budget year and one hundred one percent of the regular program district cost for the base year, or ninety percent of the amount by which the budget guarantee as calculated for the budget year beginning July 1, 2003, exceeds the adjusted guarantee amount. For purposes of this paragraph, the "*adjusted guarantee amount*" means the amount which would be applicable for the budget year beginning July 1, 2004, if the budget guarantee were determined for that budget year as calculated for the budget year beginning July 1, 2003.

b. For the budget year commencing July 1, 2005, the greater of the difference between the regular program district cost for the budget year and one hundred one percent of the regular program district cost for the base year, or eighty percent of the amount by which the budget guarantee as calculated for the budget year beginning July 1, 2003, exceeds the adjusted guarantee amount. For purposes of this paragraph, the "*adjusted guarantee amount*" means the amount which would be applicable for the budget year beginning July 1, 2005, if the budget guarantee were determined for that budget year as calculated for the budget year beginning July 1, 2003.

c. For the budget year commencing July 1, 2006, the greater of the difference between the regular program district cost for the budget year and one hundred one percent of the regular program district cost for the base year, or seventy percent of the amount by which the budget guarantee as calculated for the budget year beginning July 1, 2003, exceeds the adjusted guarantee amount. For purposes of this paragraph, the "*adjusted guarantee amount*" means the amount which would be applicable for the budget year beginning July 1, 2006, if the budget guarantee were determined for that budget year as calculated for the budget year beginning July 1, 2003.

d. For the budget year commencing July 1, 2007, the greater of the difference between the regular program district cost for the budget year and one hundred one percent of the regular program district cost for the base year, or sixty percent of the amount by which the budget guarantee as calculated for the budget year beginning July 1, 2003, exceeds the adjusted guarantee amount. For purposes of this paragraph, the "*adjusted guarantee amount*" means the amount which would be applicable for the budget year beginning July 1, 2007, if the budget guarantee were determined for that budget year as calculated for the budget year beginning July 1, 2003.

e. For the budget year commencing July 1, 2008, the greater of the difference between the regular program district cost for the budget year

and one hundred one percent of the regular program district cost for the base year, or fifty percent of the amount by which the budget guarantee as calculated for the budget year beginning July 1, 2003, exceeds the adjusted guarantee amount. For purposes of this paragraph, the “*adjusted guarantee amount*” means the amount which would be applicable for the budget year beginning July 1, 2008, if the budget guarantee were determined for that budget year as calculated for the budget year beginning July 1, 2003.

f. For the budget year commencing July 1, 2009, the greater of the difference between the regular program district cost for the budget year and one hundred one percent of the regular program district cost for the base year, or forty percent of the amount by which the budget guarantee as calculated for the budget year beginning July 1, 2003, exceeds the adjusted guarantee amount. For purposes of this paragraph, the “*adjusted guarantee amount*” means the amount which would be applicable for the budget year beginning July 1, 2009, if the budget guarantee were determined for that budget year as calculated for the budget year beginning July 1, 2003.

g. For the budget year commencing July 1, 2010, the greater of the difference between the regular program district cost for the budget year and one hundred one percent of the regular program district cost for the base year, or thirty percent of the amount by which the budget guarantee as calculated for the budget year beginning July 1, 2003, exceeds the adjusted guarantee amount. For purposes of this paragraph, the “*adjusted guarantee amount*” means the amount which would be applicable for the budget year beginning July 1, 2010, if the budget guarantee were determined for that budget year as calculated for the budget year beginning July 1, 2003.

h. For the budget year commencing July 1, 2011, the greater of the difference between the regular program district cost for the budget year and one hundred one percent of the regular program district cost for the base year, or twenty percent of the amount by which the budget guarantee as calculated for the budget year beginning July 1, 2003, exceeds the adjusted guarantee amount. For purposes of this paragraph, the “*adjusted guarantee amount*” means the amount which would be applicable for the budget year beginning July 1, 2011, if the budget guarantee were determined for that budget year as calculated for the budget year beginning July 1, 2003.

i. For the budget year commencing July 1, 2012, the greater of the difference between the regular program district cost for the budget year and one hundred one percent of the regular program district cost for the base year, or ten percent of the amount by which the budget guarantee as calculated for the budget year beginning July 1, 2003, exceeds the adjusted guarantee amount.

For purposes of this paragraph, the “*adjusted guarantee amount*” means the amount which would be applicable for the budget year beginning July 1, 2012, if the budget guarantee were determined for that budget year as calculated for the budget year beginning July 1, 2003.

j. For the budget year commencing July 1, 2013, and each budget year thereafter, the difference between the regular program district cost for the budget year and one hundred one percent of the regular program district cost for the base year.

For the purposes of this subsection, a school district shall be eligible to apply the eighty, seventy, sixty, fifty, forty, thirty, twenty, and ten percent provisions in paragraphs “b” through “i”, only if the school district received a budget adjustment for the budget year beginning July 1, 2004, based on the ninety percent provision in paragraph “a”.

The board of directors of a school district that wishes to receive a budget adjustment pursuant to this subsection shall adopt a resolution to receive the budget adjustment and shall, by April 1, annually, notify the department of management of the adoption of the resolution and the amount of the budget adjustment to be received.

2001 Acts, ch 126, §9 – 12
Subsections 1 and 2 amended
NEW subsection 3

257.38 Programs for returning dropouts and dropout prevention.

Boards of school districts, individually or jointly with boards of other school districts, requesting to use additional allowable growth for programs for returning dropouts and dropout prevention, shall annually submit comprehensive program plans for the programs and budget costs, including requests for additional allowable growth for funding the programs, to the department of education as provided in this chapter. The program plans shall include:

1. Program goals, objectives, and activities to meet the needs of children who may drop out of school.
2. Student identification criteria and procedures.
3. Staff in-service education design.
4. Staff utilization plans.
5. Evaluation criteria and procedures and performance measures.
6. Program budget.
7. Qualifications required of personnel delivering the program.
8. A provision for dropout prevention and integration of dropouts into the educational program of the district.
9. A provision for identifying dropouts.
10. A program for returning dropouts.
11. Other factors the department requires.

Program plans shall identify the parts of the plan that will be implemented first upon approval of the application. If a district is requesting to use

additional allowable growth to finance the program, it shall not identify more than five percent of its budget enrollment for the budget year as re-

turning dropouts and potential dropouts.

2001 Acts, ch 159, §9
Subsection 7 amended

CHAPTER 257B

SCHOOL FUNDS

257B.20 Investment of permanent fund.

The permanent school fund which is, at any time, in the custody of the treasurer of state, shall be invested as follows:

1. In bonds or other evidences of indebtedness issued, assumed, or guaranteed by the United States of America, or by any agency or instrumentality thereof.

2. In bonds, or other evidences of indebtedness of the state of Iowa, or of any school district, county, township, city or other political subdivision of the state of Iowa which are issued pursuant

to law.

3. In savings accounts or in time deposits in Iowa banks approved as depositories by the executive council.

4. In any investments authorized for the Iowa public employees' retirement system in section 97B.7, subsection 2, paragraph "b", except that investment in common stocks shall not be permitted.

For future amendment to subsection 4 effective July 1, 2002, see 2001 Acts, ch 68, §16, 24

Section not amended; footnote added

CHAPTER 258

VOCATIONAL EDUCATION

258.7 and 258.8 Repealed by 2001 Acts, ch 159, § 18.

CHAPTER 260A

COMMUNITY COLLEGE VOCATIONAL-TECHNICAL TECHNOLOGY IMPROVEMENT

260A.2 Community college vocational-technical technology improvement plans.

Prior to receiving moneys under this chapter, the board of directors of a community college shall adopt a technology plan that supports community college vocational-technical technology improvement efforts, authorizes a needs assessment of business and industry in the district, and includes an evaluation component, and shall provide to the department of education adequate assurance that funds received under this chapter will be used in accordance with the technology plan. The plan shall be developed by licensed professional staff of the community college, including both faculty members and school administrators, the private sector, trade and professional organizations, and other interested parties, and shall, at a minimum,

focus on the attainment of the vocational-technical skills and achievement goals of the student. The plan shall consider the community college's interconnectivity with the Iowa communications network and shall demonstrate how the board will utilize technology to improve vocational-technical student achievement. The technology plan shall be kept on file at the community college. Progress made under the plan shall be reported annually to the department of education in a manner prescribed by the department of education.

2001 Acts, ch 189, §10
Section amended

260A.4 Future repeal. Repealed by 2001 Acts, ch 189, § 17.

CHAPTER 260C

COMMUNITY COLLEGES

260C.14 Authority of directors.

The board of directors of each community college shall:

1. Determine the curriculum to be offered in such school or college subject to approval of the state board and ensure that all vocational offerings are competency-based, provide any minimum competencies required by the department of education, comply with any applicable requirements in chapter 258, and are articulated with local school district vocational education programs. If an existing private educational or vocational institution within the merged area has facilities and curriculum of adequate size and quality which would duplicate the functions of the area school, the board of directors shall discuss with the institution the possibility of entering into contracts to have the existing institution offer facilities and curriculum to students of the merged area. The board of directors shall consider any proposals submitted by the private institution for providing such facilities and curriculum. The board of directors may enter into such contracts. In approving curriculum, the state board shall ascertain that all courses and programs submitted for approval are needed and that the curriculum being offered by an area school does not duplicate programs provided by existing public or private facilities in the area. In determining whether duplication would actually exist, the state board shall consider the needs of the area and consider whether the proposed programs are competitive as to size, quality, tuition, purposes, and area coverage with existing public and private educational or vocational institutions within the merged area. If the board of directors of the merged area chooses not to enter into contracts with private institutions under this subsection, the board shall submit a list of reasons why contracts to avoid duplication were not entered into and an economic impact statement relating to the board's decision.

2. Have authority to determine tuition rates for instruction. Tuition for residents of Iowa shall not exceed the lowest tuition rate per semester, or the equivalent, charged by an institution of higher education under the state board of regents for a full-time resident student. However, except for students enrolled under chapter 261C, if a local school district pays tuition for a resident pupil of high school age, the limitation on tuition for residents of Iowa shall not apply, the amount of tuition shall be determined by the board of directors of the community college with the consent of the local school board, and the pupil shall not be included in the full-time equivalent enrollment of the community college for the purpose of computing general aid to the community college. Tuition for nonresi-

dents of Iowa shall not be less than the marginal cost of instruction of a student attending the college. A lower tuition for nonresidents may be permitted under a reciprocal tuition agreement between a merged area and an educational institution in another state, if the agreement is approved by the state board. The board may designate that a portion of the tuition moneys collected from students be used for student aid purposes.

3. Have the powers and duties with respect to community colleges, not otherwise provided in this chapter, which are prescribed for boards of directors of local school districts by chapter 279 except that the board of directors is not required to prohibit the use of tobacco and the use or possession of alcoholic liquor or beer by any student of legal age under the provisions of section 279.9.

4. Have the power to enter into contracts and take other necessary action to insure a sufficient curriculum and efficient operation and management of the college and maintain and protect the physical plant, equipment, and other property of the college.

5. Establish policy and make rules, not inconsistent with law and administrative rules, regulations, and policies of the state board, for its own government and that of the administrative, teaching, and other personnel, and the students of the college, and aid in the enforcement of such laws, rules, and regulations.

6. Have authority to sell a student-constructed building and the property on which the student-constructed building is located or any article resulting from any vocational program or course offered at a community college by any procedure which may be adopted by the board. Governmental agencies and governmental subdivisions of the state within the merged areas shall be given preference in the purchase of such articles. All revenue received from the sale of any article shall be credited to the funds of the board of the merged area.

7. With the consent of the inventor, and in the discretion of the board, secure letters patent or copyright on inventions of students, instructors, and officials of any community college of the merged area, or take assignment of such letters patent or copyright and make all necessary expenditures in regard thereto. Letters patent or copyright on inventions when so secured shall be the property of the board of the merged area and the royalties and earnings thereon shall be credited to the funds of the board.

8. Set the salary of the area superintendent. In setting the salary, the board shall consider the salaries of administrators of educational institutions in the merged area and the enrollment of the

community college.

9. At the request of an employee through contractual agreement the board may arrange for the purchase of group or individual annuity contracts for any of its employees, which annuity contracts are issued by a nonprofit corporation issuing retirement annuities exclusively for educational institutions and their employees or are purchased from any company the employee chooses 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, for retirement or other purposes, and may make payroll deductions in accordance with the arrangements for the purpose of paying the entire premium due and to become due under the contract. The deductions shall be made in the manner which will qualify the annuity premiums for the benefits under section 403(b) of the Internal Revenue Code, as defined in section 422.3. The employee's rights under the annuity contract are nonforfeitable except for the failure to pay premiums. If an existing tax-sheltered annuity contract is to be replaced by a new contract, the agent or representative of the company shall submit a letter of intent by registered mail to the company being replaced, to the insurance commissioner of the state of Iowa, and to the agent's or representative's own company at least thirty days prior to any action. This letter of intent shall contain the policy number and description of the contract being replaced and a description of the replacement contract. As used in this section, unless the context otherwise requires, "*annuity contract*" includes any custodial account which meets the requirements of section 403(b)(7) of the Internal Revenue Code, as defined in section 422.3.

10. Make necessary rules to provide for the policing, control, and regulation of traffic and parking of vehicles and bicycles on the property of the community college. The rules may provide for the use of institutional roads, driveways, and grounds; registration of vehicles and bicycles; the designation of parking areas; the erection and maintenance of signs designating prohibitions or restrictions; the installation and maintenance of parking control devices except parking meters; and assessment, enforcement, and collection of reasonable penalties for the violation of the rules.

Rules made under this subsection may be enforced under procedures adopted by the board of directors. Penalties may be imposed upon students, faculty, and staff for violation of the rules, including, but not limited to, a reasonable monetary penalty which may be deducted from student deposits and faculty or staff salaries or other funds in possession of the community college or added to student tuition bills. The rules made under this subsection may also be enforced by the impoundment of vehicles and bicycles parked in violation of the rules, and a reasonable fee may be charged for the cost of impoundment and storage prior to

the release of the vehicle or bicycle to the owner. Each community college shall establish procedures for the determination of controversies in connection with the imposition of penalties. The procedures shall require giving notice of the violation and the penalty prescribed and providing the opportunity for an administrative hearing.

11. Be authorized to issue to employees of community colleges school credit cards to use for payment of authorized expenditures incurred in the performance of work-related duties.

12. During the second week of August of each year, publish by one insertion in at least one newspaper published in the merged area a summarized statement verified by affidavit of the secretary of the board showing the receipts and disbursements of all funds of the community college for the preceding fiscal year. The statement of disbursements shall show the names of the persons, firms, or corporations, and the total amount paid to each during the fiscal year. The board is not required to make the publications and notices required under sections 279.35 and 279.36.

13. Adopt policies and procedures for the use of telecommunications as an instructional tool at the community college. 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.

14. In its discretion, adopt rules relating to the classification of students enrolled in the community college who are residents of Iowa's sister states as residents or nonresidents for tuition and fee purposes.

15. By July 1, 1991, develop a policy which requires 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.

16. By July 1, 1991, 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.

17. Provide for eligible alternative retirement benefits systems which shall be limited to the following:

a. An alternative retirement benefits system which is issued by or through a nonprofit corporation issuing retirement annuities exclusively to educational institutions and their employees for persons newly employed after July 1, 1990, and for persons employed by the community college who are members of the Iowa public employees' retirement system on July 1, 1994, and who elect cover-

age under that system pursuant to section 97B.42, in lieu of coverage under the Iowa public employees' retirement system.

b. An alternative retirement benefits system which is issued by or through an insurance company authorized to issue annuity contracts in this state, for persons newly employed on or after July 1, 1997, who are already members of the alternative retirement benefits system and who elect coverage under that system pursuant to section 97B.42, in lieu of coverage under the Iowa public employees' retirement system.

c. An alternative retirement benefits system offered through the community college, at the discretion of the board of directors of the community college, pursuant to this lettered paragraph which is issued by or through an insurance company authorized to issue annuity contracts in this state, for persons newly employed by that community college on or after July 1, 1998, who are not members of the alternative retirement benefits system and who elect coverage under that system pursuant to section 97B.42, in lieu of coverage under the Iowa public employees' retirement system. The board of directors of a community college may limit the number of providers of alternative retirement benefits systems offered pursuant to this lettered paragraph to no more than six. The selection by the board of directors of a community college of a provider of an alternative retirement benefits system pursuant to this lettered paragraph shall not constitute an endorsement of that provider by

the community college.

However, the employer's annual contribution in dollars under an eligible alternative retirement benefits system described in this subsection shall not exceed the annual contribution in dollars which the employer would contribute if the employee had elected to remain an active member pursuant to the Iowa public employees' retirement system, as set forth in section 97B.11. For purposes of this subsection, "alternative retirement benefits system" means an employer-sponsored primary pension plan requiring mandatory employer contributions that meets the requirements of section 401(a), 403(a), or 403(b) of the Internal Revenue Code.

18. Develop and implement a written policy, which is disseminated during student 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 community college.

d. Facilitating the accurate and prompt reporting of sexual abuse to the duly constituted law enforcement authorities.

19. Provide, within a reasonable time, information as requested by the departments of management and education.

2001 Acts, ch 39, §1

Subsection 19 stricken and subsection 20 renumbered as 19

CHAPTER 260F

JOBS TRAINING

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 twenty-five thousand dollars for any business site, or fifty thousand dollars within a three-fiscal-year period for any business site. If the project involves a consortium of businesses, the maximum award per project shall not exceed fifty thousand dollars. Participation in a consortium does not affect a business site's eligibility for individual project assistance. Prior to approval a business shall agree to match program amounts in accordance with criteria established by the department.

3. Notwithstanding the requirements of this section, moneys in the job training fund may be used by a community college to conduct entrepreneur development and support activities.

2001 Acts, ch 188, §24

NEW subsection 3

CHAPTER 260G

ACCELERATED CAREER EDUCATION PROGRAM

260G.4A Program job credits from withholding.

In order to develop and retain program jobs within the state, an agreement entered into under section 260G.3 may include a provision for program job credits based on program jobs identified in the agreement. If a program provides that part of the program costs are to be met by receipt of program job credits, the method to be used shall be as follows:

1. Program job credits shall be based upon the program job positions identified and agreed to in the agreement.

2. Eligibility for program job credits shall be based on certification of program job positions and program job wages by the employer at the time established in the agreement. An amount up to ten percent of the gross program job wage as certified by the employer in the agreement shall be credited from the total payment made by an employer pursuant to section 422.16. The employer shall receive a credit against all withholding taxes due by the employer regardless of whether or not the withholding from the employer of current program job wages is less than ten percent. The employer shall remit the amount of the credit quarterly in the same manner as withholding payments are reported to the department of revenue and finance, to the community college to be allocated to and when collected paid into a special fund of the community college to pay, in part, the program costs. When the program costs have been paid, the employer credits shall cease and any moneys received after the program costs have been paid shall be remitted to the treasurer of state to be deposited in the general fund of the state.

3. The employer shall certify to the department of revenue and finance that the program job credit is in accordance with the agreement and shall provide other information the department may require.

4. A community college shall certify to the department of revenue and finance that the amount of the program job credit is in accordance with an agreement and shall provide other information the department may require.

5. Employees from an employer participating in an agreement shall receive full credit for the amount withheld as provided in section 422.16.

6. Pursuant to an agreement or a statement of intent to enter into an agreement dated on or after July 1, 2000, program job credits may be allocated retroactively to program costs incurred on or after July 1, 2000.

2001 Acts, ch 99, §1, 2

Subsection 6 is effective May 2, 2001, and applies retroactively on and

after July 1, 2000; 2001 Acts, ch 99, §2
NEW subsection 6

260G.4B Maximum statewide program job credit.

1. The total amount of program job credits from all employers which shall be allocated for all accelerated career education programs in the state in any one fiscal year shall not exceed the sum of three million dollars in the fiscal year beginning July 1, 2000, three million dollars in the fiscal year beginning July 1, 2001, and six million dollars in the fiscal year beginning July 1, 2002, and every fiscal year thereafter. Any increase in program job credits above the six-million-dollar limitation per fiscal year shall be developed, based on recommendations in a study which shall be conducted by the department of economic development of the needs and performance of approved programs in the fiscal years beginning July 1, 2000, and July 1, 2001. The study's findings and recommendations shall be submitted to the general assembly by the department by December 31, 2002. The study shall include but not be limited to an examination of the quality of the programs, the number of program participant placements, the wages and benefits in program jobs, the level of employer contributions, the size of participating employers, and employer locations. A community college shall file a copy of each agreement with the department of economic development. The department shall maintain an annual record of the proposed program job credits under each agreement for each fiscal year. Upon receiving a copy of an agreement, the department shall allocate any available amount of program job credits to the community college according to the agreement sufficient for the fiscal year and for the term of the agreement. When the total available program job credits are allocated for a fiscal year, the department shall notify all community colleges that the maximum amount has been allocated and that further program job credits will not be available for the remainder of the fiscal year. Once program job credits have been allocated to a community college, the full allocation shall be received by the community college throughout the fiscal year and for the term of the agreement even if the statewide program job credit maximum amount is subsequently allocated and used.

2. For the fiscal years beginning July 1, 2000, and July 1, 2001, the department of economic development shall allocate eighty thousand dollars of the first one million two hundred thousand dollars of program job credits authorized and available for that fiscal year to each community college. This allocation shall be used by each community

college to provide funding for approved programs. For the fiscal year beginning July 1, 2002, and for every fiscal year thereafter, the department of economic development shall divide equally among the community colleges thirty percent of the program job credits available for that fiscal year for allocation to each community college to be used to provide funding for approved programs. If any portion of the allocation to a community college under this subsection has not been committed by April 1

of the fiscal year for which the allocation is made, the uncommitted portion is available for use by other community colleges. Once a community college has committed its allocation for any fiscal year under this subsection, the community college may receive additional program job credit allocations from those program job credits authorized and still available for that fiscal year.

2001 Acts, ch 176, §35
Subsection 1 amended

CHAPTER 261

COLLEGE STUDENT AID COMMISSION

261.9 Definitions.

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

1. “*Accredited private institution*” means an institution of higher learning located in Iowa which is operated privately and not controlled or administered by any state agency or any subdivision of the state, except for county hospitals as provided in paragraph “c” of this subsection, and which meets at least one of the criteria in paragraphs “a” through “c” and all of the criteria in paragraphs “d” through “f”:

a. Is accredited by the north central association of colleges and secondary schools accrediting agency based on their requirements.

b. Is certified by the north central association of colleges and secondary schools accrediting agency as a candidate for accreditation by that agency.

c. Is a school of nursing accredited by the national league for nursing and approved by the board of nursing, including such a school operated, controlled, and administered by a county public hospital.

d. Promotes equal opportunity and affirmative action efforts in the recruitment, appointment, assignment, and advancement of personnel at the institution. In carrying out this responsibility the institution shall do all of the following:

(1) Designate a position as the affirmative action coordinator.

(2) Adopt affirmative action standards.

(3) Gather data necessary to maintain an ongoing assessment of affirmative action efforts.

(4) Monitor accomplishments with respect to affirmative action remedies identified in affirmative action plans.

(5) Conduct studies of preemployment and postemployment processes in order to evaluate employment practices and develop improved methods of dealing with all employment issues related to equal employment opportunity and affirmative action.

(6) Establish an equal employment committee

to assist in addressing affirmative action needs, including recruitment.

(7) Address equal opportunity and affirmative action training needs by:

(a) Providing appropriate training for managers and supervisors.

(b) Insuring that training is available for all staff members whose duties relate to personnel administration.

(c) Investigating means for training in the area of career development.

(8) Require development of equal employment opportunity reports, including the initiation of the processes necessary for the completion of reports required by the federal equal employment opportunity commission.

(9) Address equal opportunity and affirmative action policies with respect to employee benefits and leaves of absence.

(10) File annual reports with the college aid commission of activities under this paragraph.

e. Adopts a policy that prohibits unlawful possession, use, or distribution of controlled substances by students and employees on property owned or leased by the institution or in conjunction with activities sponsored by the institution. Each institution shall provide information about the policy to all students and employees. The policy shall include a clear statement of sanctions for violation of the policy and information about available drug or alcohol counseling and rehabilitation programs. In carrying out this policy, an institution shall provide substance abuse prevention programs for students and employees.

f. Develops and implements a written policy, which is disseminated during student registration or orientation, addressing the following four areas relating to sexual abuse:

(1) Counseling.

(2) Campus security.

(3) Education, including prevention, protection, and the rights and duties of students and employees of the institution.

(4) Facilitating the accurate and prompt re-

porting of sexual abuse to the duly constituted law enforcement authorities.

2. “*Commission*” means the college student aid commission.

3. “*Full-time resident student*” means an individual resident of Iowa who is enrolled at an accredited private institution in a course of study including at least twelve semester hours or the trimester equivalent of twelve semester hours. “*Course of study*” does not include correspondence courses.

4. “*Financial need*” means the difference between the student’s financial resources available, including those available from the student’s parents as determined by a completed parents’ confidential statement, and the student’s anticipated expenses while attending the accredited private institution. Financial need shall be redetermined

at least annually.

5. “*Part-time resident student*” means an individual resident of Iowa who is enrolled at an accredited private institution in a course of study including at least three semester hours or the trimester or quarter equivalent of three semester hours. “*Course of study*” does not include correspondence courses.

6. “*Qualified student*” means a resident student who has established financial need and who is making satisfactory progress toward graduation.

7. “*Tuition grant*” means an award by the state of Iowa to a qualified student under this division.

2001 Acts, ch 24, §42; 2001 Acts, ch 39, §2
Subsection 1, paragraph c amended
Subsection 1, paragraph g stricken

261.17 Printed in Addendum.

CHAPTER 262

BOARD OF REGENTS

262.7 Institutions governed.

The state board of regents shall govern the following institutions:

1. The state university of Iowa.
2. The Iowa state university of science and technology, including the agricultural experiment station.
3. The university of northern Iowa.
4. The Iowa braille and sight saving school.
5. The state school for the deaf.
6. The Oakdale campus.
7. The university of Iowa hospitals and clinics’ center for disabilities and development.

2001 Acts, ch 181, §15
Subsection 7 amended

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 gov-

ernment 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, soybean-based inks. All inks purchased that are used internally or are contracted for by the board shall be soybean-based to the extent formulations for such inks are available.

a. The department of natural resources shall review the procurement specifications currently used by the board to eliminate, wherever possible, discrimination against the procurement of products manufactured with soybean-based inks.

b. 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.

c. The board, in conjunction with the department of natural resources, shall adopt rules to carry out the provisions of this section.

d. The department of natural resources shall cooperate with the board in all phases of implementing this section.

5. 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 non-renewable resources. For the purposes of this subsection, “*packing material*” means material, other than an exterior packing shell, that is used to sta-

bilize, protect, cushion, or brace the contents of a package.

6. 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 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.

7. 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.

8. 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.

9. 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.

10. Collect the highest rate of interest, consistent with safety, obtainable on daily balances in the hands of the treasurer of each institution.

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. The letters patent or copy-

right 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 indi-

viduals 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. However, the board shall establish criteria by which an institution may discontinue annual evaluations of a specific person providing instruction. The criteria shall include receipt by the institution of two consecutive positive annual evaluations from the majority of students evaluating the person.

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. 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.

2001 Acts, ch 39, §3

Subsection 28 stricken and subsection 29 renumbered as 28

CHAPTER 263

UNIVERSITY OF IOWA

CENTER FOR
DISABILITIES AND DEVELOPMENT**263.9 Establishment and objectives.**

The state board of regents is hereby authorized to establish and maintain in reasonable proximity to Iowa City and in conjunction with the state university of Iowa and the university hospital, a center for disabilities and development having as its objects the education and treatment of children with severe disabilities. The center shall be conducted in conjunction with the activities of the university of Iowa children's hospital. Insofar as is practicable, the facilities of the university children's hospital shall be utilized.

2001 Acts, ch 181, §17
Section amended

263.10 Persons admitted.

Every resident of the state who is not more than twenty-one years of age, who has such severe disabilities as to be unable to acquire an education in the common schools, and every such person who is twenty-one and under thirty-five years of age who has the consent of the state board of regents, shall be entitled to receive an education, care, and training in the center for disabilities and development, and nonresidents similarly situated may be entitled to an education and care at the center upon such terms as may be fixed by the state board of regents. The fee for nonresidents shall be not less than the average expense of resident pupils and shall be paid in advance. Residents and persons under the care and control of a director of a division of the department of human services who have severe disabilities may be transferred to the center upon such terms as may be agreed upon by the state board of regents and the director.

2001 Acts, ch 181, §18
Section amended

263.12 Payment by counties.

The provisions of sections 270.4 to 270.8, inclusive, are hereby made applicable to the university of Iowa hospitals and clinics' center for disabilities and development.

2001 Acts, ch 181, §19
Section amended

263.13 Gifts accepted.

The state board of regents is authorized to accept, for the benefit of the center for disabilities and development, gifts, devises, or bequests of property, real or personal including grants from the federal government. The state board of regents may exercise such powers with reference to the management, sale, disposition, investment, or

control of property so given, devised, or bequeathed, as may be deemed essential to its preservation and the purposes for which made. No contribution or grant shall be received or accepted if any condition is attached as to its use or administration other than it be used for aid to the center as provided in this division.

2001 Acts, ch 181, §20
Section amended

263.17 Center for health effects of environmental contamination.

1. The state board of regents shall establish and maintain at Iowa City as an integral part of the state university of Iowa the center for health effects of environmental contamination, having as its object the determination of the levels of environmental contamination which can be specifically associated with human health effects.

2. *a.* The center shall be a cooperative effort of representatives of the following organizations:

- (1) The state university of Iowa department of preventive medicine and environmental health.
- (2) The department of pediatrics of the university of Iowa college of medicine.
- (3) The state hygienic laboratory.
- (4) The institute of agricultural medicine.
- (5) The Iowa cancer center.
- (6) The department of civil and environmental engineering.
- (7) Appropriate clinical and basic science departments.
- (8) The college of law.
- (9) The college of liberal arts and sciences.
- (10) The Iowa department of public health.
- (11) The department of natural resources.
- (12) The department of agriculture and land stewardship.

b. The active participation of the national cancer institute, the agency for toxic substances and disease registries, the national center for disease control, the United States environmental protection agency, and the United States geological survey, shall also be sought and encouraged.

3. The center may:

a. Assemble all pertinent laboratory data on the presence and concentration of contaminants in soil, air, water, and food, and develop a data retrieval system to allow the findings to be easily accessed by exposed populations.

b. Make use of data from the existing cancer and birth defect statewide recording systems and develop similar recording systems for specific organ diseases which are suspected to be caused by exposure to environmental toxins.

c. Develop registries of persons known to be exposed to environmental hazards so that the

health status of these persons may be examined over time.

d. Develop highly sensitive biomedical assays which may be used in exposed persons to determine early evidence of adverse health effects.

e. Perform epidemiologic studies to relate occurrence of a disease to contaminant exposure and to ensure that other factors known to cause the disease in question can be ruled out.

f. Foster relationships and ensure the exchange of information with other teaching institutions or laboratories in the state which are concerned with the many forms of environmental contamination.

g. Implement programs of professional education and training of medical students, physicians, nurses, scientists, and technicians in the causes and prevention of environmentally induced disease.

h. Implement public education programs to inform persons of research results and the significance of the studies.

i. Respond as requested to any branch of government for consultation in the drafting of laws and regulations to reduce contamination of the environment.

4. An advisory committee consisting of one representative of each of the organizations enumerated in subsection 2, paragraph “a”, is established. The advisory committee shall:

a. Employ, as a state employee, a full-time director to operate the center. The director shall coordinate the efforts of the heads of each of the major divisions of laboratory analysis, epidemiology and biostatistics, biomedical assays, and exposure modeling and shall also coordinate the efforts of professional and support staff in the operation of the center.

b. Submit an annual report of the activities of the center to the legislative council of the general assembly by January 15 of each year.

5. The center shall maintain the confidentiality of any information obtained from existing registries and from participants in research programs. Specific research projects involving human subjects shall be approved by the state university of Iowa institutional review board.

6. The center may solicit, accept, and administer moneys appropriated to the center by a public or private agency.

7. The center shall cooperate with the center for rural health and primary care, established under section 135.107, the center for agricultural health and safety established under section 262.78, and the department of agriculture and land stewardship. The agencies shall coordinate programs to the extent practicable.

2001 Acts, ch 74, §19

Subsection 2, paragraph a, subparagraph (2) amended

CHAPTER 270

SCHOOL FOR THE DEAF

270.7 Payment by county.

The county auditor shall, upon receipt of the certificate, pass it to the credit of the state, and issue a notice to the county treasurer authorizing the county treasurer to transfer the amount to the general state revenue, which shall be filed by the treasurer as authority for making the transfer, and the county treasurer shall include the amount in the next remittance of state taxes to the treasurer of state, designating the fund to which it belongs.

If a county fails to pay these bills within sixty days from the date of certificate from the superintendent, the director of revenue and finance shall charge the delinquent county a penalty of three-fourths of one percent per month on and after sixty days from the date of certificate until paid. The penalties shall be credited to the general fund of the state.

Method for payment for prescription drug costs for fiscal years beginning July 1, 2000, and July 1, 2001; 2000 Acts, ch 1223, §16; 2001 Acts, ch 181, §11

Section not amended; footnote revised

CHAPTER 272

EDUCATIONAL EXAMINERS BOARD

272.2 Board of examiners created.

The board of educational examiners is created to exercise the exclusive authority to:

1. *a.* License practitioners who do not hold or receive a license from another professional licensing board. Licensing authority includes the authority to establish criteria for the licenses; estab-

lish issuance and renewal requirements; create application and renewal forms; create licenses that authorize different instructional functions or specialties; develop a code of professional rights and responsibilities, practices, and ethics, which shall, among other things, address the failure of a practitioner to fulfill contractual obligations un-

der section 279.13; and develop any other classifications, distinctions, and procedures which may be necessary to exercise licensing duties. In addressing the failure of a practitioner to fulfill contractual obligations, the board shall consider factors beyond the practitioner's control.

b. Notwithstanding section 272.28, subsection 1, a teacher shall be licensed in accordance with rules adopted pursuant to chapter 272, Code 2001, if the teacher successfully completes a beginning teacher mentoring program approved pursuant to chapter 256E, Code 2001, on or before June 30, 2002, or is employed by a school district that does not offer a beginning teacher mentoring and induction program approved in accordance with this chapter during the school year beginning July 1, 2001.

2. Establish, collect, and refund fees for a license.

3. Enter into reciprocity agreements with other equivalent state boards or a national certification board to provide for licensing of applicants from other states or nations.

4. Enforce rules adopted by the board through revocation or suspension of a license, or by other disciplinary action against a practitioner or professional development program licensed by the board of educational examiners.

5. Apply for and receive federal or other funds on behalf of the state for purposes related to its duties.

6. Evaluate and conduct studies of board standards.

7. Hire an executive director, legal counsel, and other personnel and control the personnel administration of persons employed by the board.

8. Hear appeals regarding application, renewal, suspension, or revocation of a license. Board action is final agency action for purposes of chapter 17A.

9. Establish standards for the determination of whether an applicant is qualified to perform the duties required for a given license.

10. Issue statements of professional recognition to school service personnel who are licensed by another professional licensing board.

11. Make recommendations to the state board of education concerning standards for the approval of professional development programs.

12. Establish, under chapter 17A, rules necessary to carry out board duties, and establish a budget request.

13. Adopt rules to provide for nontraditional preparation options for licensing persons who hold a bachelor's degree from an accredited college or university, who do not meet other requirements for licensure.

14. Adopt rules which permit the board to deny a license to or revoke a license of a person upon the board's finding by a preponderance of evidence that either the person has been convicted of a crime or that there has been a founded report of

child abuse against the person. Rules adopted shall provide that in determining whether a person should be denied a license or that a practitioner's license should be revoked, the board shall consider the nature and seriousness of the founded abuse or crime in relation to the position sought, the time elapsed since the founded abuse or crime was committed, the degree of rehabilitation which has taken place since the incidence of founded abuse or the commission of the crime, the likelihood that the person will commit the same abuse or crime again, and the number of founded abuses committed or criminal convictions by the person involved.

15. Adopt rules that require specificity in written complaints that are filed by individuals who have personal knowledge of an alleged violation and which are accepted by the board, provide that the jurisdictional requirements as set by the board in administrative rule are met on the face of the complaint before initiating an investigation of allegations, provide that any investigation be limited to the allegations contained on the face of the complaint, provide for an adequate interval between the receipt of a complaint and public notice of the complaint, permit parties to a complaint to mutually agree to a resolution of the complaint filed with the board, allow the respondent the right to review any investigative report upon a finding of probable cause for further action by the board, require that the conduct providing the basis for the complaint occurred within three years of discovery of the event by the complainant unless good cause can be shown for an extension of this limitation, and require complaints to be resolved within one hundred eighty days unless good cause can be shown for an extension of this limitation.

16. a. Administer the Praxis II examination for knowledge of pedagogies and for not more than one content area to each individual who is applying for a provisional license prior to issuance of the license.

b. Examination fees for the examination required under this subsection shall be paid from moneys appropriated to the board for this purpose. Costs incurred for additional content area examinations shall be paid by the applicant.

c. This subsection is repealed effective June 30, 2003.

2001 Acts, ch 103, §1; 2001 Acts, ch 161, §15, 16; 2001 Acts, ch 177, §13,

15

See Code editor's note to §12.65

Subsection 1 amended

NEW subsection 16

272.10 Fees.

It is the intent of the general assembly that licensing fees established by the board of educational examiners be sufficient to finance the activities of the board under this chapter.

Licensing fees are payable to the treasurer of state and shall be deposited with the executive director of the board. The executive director shall

deposit the fees with the treasurer of state and the fees shall be credited to the general fund of the state. The executive director shall keep an accurate and detailed account of fees received and paid to the treasurer of state.

Use of funds received from increase in fees after July 1, 1997, for purposes related to board of educational examiners duties for fiscal years beginning July 1, 2000, and July 1, 2001; 2000 Acts, ch 1223, §7; 2001 Acts, ch 181, §7

Section not amended; footnote revised

272.28 Mentoring and induction requirement.

1. Effective July 1, 2003, requirements for teacher licensure beyond a provisional license shall include successful completion of a beginning teacher mentoring and induction program approved by the state board of education.

2. A teacher from an accredited nonpublic school or another state or country is exempt from the requirement of subsection 1 if the teacher can document three years of successful teaching experience within the past five years and meet or exceed the requirements contained in rules adopted under this chapter for endorsement and licensure.

2001 Acts, ch 161, §17
NEW section

272.29 and 272.30 Reserved.

272.33 Evaluator license.

In addition to licenses required under rules adopted pursuant to this chapter, an individual employed as an administrator, supervisor, school service person, or teacher by a school district, area education agency, or community college, who conducts evaluations of the performance of individuals holding licenses under this chapter, shall possess an evaluator license or an evaluator endorsement appearing on a teaching or administrative license. Individuals employed in community colleges who do not directly supervise licensed teaching faculty are exempt from this section.

The board of educational examiners shall adopt rules establishing requirements for an evaluator

license or an evaluator endorsement including but not limited to renewal requirements, fees, and suspension and revocation of evaluator licenses or endorsements. An approved program shall include provisions for determining that an applicant for an evaluator license or endorsement has satisfactorily completed the program. The state board of education shall work with institutions of higher education under the state board of regents, private colleges and universities, community colleges, and area education agencies to ensure that the courses required under subsection 1 are offered throughout the state at convenient times and at reasonable cost. The requirements shall include completion of a program approved by the state board of education as follows:

1. For evaluation of teachers, the development of skills including but not limited to analysis of lesson plans, classroom observation, analysis of data, performance improvement strategies, and communication skills.

2. For evaluation of licensed employees other than teachers, the development of skills including but not limited to communication skills, analysis of employee performance, analysis of data, and performance improvement strategies.

An evaluator license is valid for a period of five years and is renewable upon meeting renewal requirements established by the board of educational examiners. The holder of a license with an evaluator endorsement must complete evaluation coursework as part of license renewal requirements. The board of educational examiners shall develop renewal requirements for holders of evaluator endorsements. To be eligible for an evaluator license or evaluator endorsement, an individual must hold either a teacher's license or administrative license issued by the board of educational examiners. An individual possessing a permanent teaching license which remains in force shall be issued an evaluator license.

For future repeal of this section effective July 1, 2002, see 2001 Acts, ch 161, §21

Section not amended; footnote added

CHAPTER 272C

CONTINUING EDUCATION AND REGULATION — PROFESSIONAL AND OCCUPATIONAL

272C.1 Definitions.

1. *“Continuing education”* means that education which is obtained by a professional or occupational licensee in order to maintain, improve, or expand skills and knowledge obtained prior to initial licensure or to develop new and relevant skills and knowledge. This education may be obtained through formal or informal education practices, self-study, research, and participation in professional, technical, and occupational societies, and by other similar means as authorized by the board.

2. *“Disciplinary proceeding”* means any proceeding under the authority of a licensing board pursuant to which licensee discipline may be imposed.

3. *“Inactive licensee re-entry”* means that process a former or inactive professional or occupational licensee pursues to again be capable of actively and competently practicing as a professional or occupational licensee.

4. *“Licensee discipline”* means any sanction a licensing board may impose upon its licensees for

conduct which threatens or denies citizens of this state a high standard of professional or occupational care.

5. The term “*licensing*” and its derivations include the terms “*registration*” and “*certification*” and their derivations.

6. “*Licensing board*” or “*board*” includes the following boards:

a. The state board of engineering and land surveying examiners, created pursuant to chapter 542B.

b. The board of examiners of shorthand reporters created pursuant to article 3 of chapter 602.

c. The accountancy examining board, created pursuant to chapter 542C.

d. The Iowa real estate commission, created pursuant to chapter 543B.

e. The board of architectural examiners, created pursuant to chapter 544A.

f. The Iowa board of landscape architectural examiners, created pursuant to chapter 544B.

g. The board of barber examiners, created pursuant to chapter 147.

h. The board of chiropractic examiners, created pursuant to chapter 147.

i. The board of cosmetology arts and sciences examiners, created pursuant to chapter 147.

j. The board of dental examiners, created pursuant to chapter 147.

k. The board of mortuary science examiners, created pursuant to chapter 147.

l. The board of medical examiners, created pursuant to chapter 147.

m. The board of physician assistant examiners, created pursuant to chapter 148C.

n. The board of nursing, created pursuant to chapter 147.

o. The board of examiners for nursing home administrators, created pursuant to chapter 155.

p. The board of optometry examiners, created pursuant to chapter 147.

q. The board of pharmacy examiners, created pursuant to chapter 147.

r. The board of physical and occupational therapy examiners, created pursuant to chapter 147.

s. The board of podiatry examiners, created pursuant to chapter 147.

t. The board of psychology examiners, created pursuant to chapter 147.

u. The board of speech pathology and audiology examiners, created pursuant to chapter 147.

v. The board for the licensing and regulation of hearing aid dealers, created pursuant to chapter 154A.

w. The board of veterinary medicine, created pursuant to chapter 169.

x. The director of the department of natural resources in certifying water treatment operators as provided in sections 455B.211 through 455B.224.

y. Any professional or occupational licensing board created after January 1, 1978.

z. The commissioner of insurance in licensing insurance producers pursuant to chapter 522B, except those producers authorized to sell only credit insurance or crop insurance.

aa. The state board of respiratory care in licensing respiratory care practitioners pursuant to chapter 152B.

ab. The board of examiners for athletic training in licensing athletic trainers pursuant to chapter 152D.

ac. The board of examiners for massage therapy in licensing massage therapists pursuant to chapter 152C.

7. “*Malpractice*” means any error or omission, unreasonable lack of skill, or failure to maintain a reasonable standard of care by a licensee in the course of practice of the licensee’s occupation or profession, pursuant to this chapter.

8. “*Peer review*” means evaluation of professional services rendered by a professional practitioner.

9. “*Peer review committee*” means one or more persons acting in a peer review capacity pursuant to this chapter.

2001 Acts, ch 16, §1, 37
2001 amendment to subsection 6, paragraph z, takes effect January 1, 2002; 2001 Acts, ch 16, §37
For future amendment to subsection 6, paragraph c, effective July 1, 2002, see 2001 Acts, ch 55, §25, 38
Subsection 6, paragraph z amended

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, 152.10, 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 522B, 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 combina-

tion, 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 specified 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.

2001 Acts, ch 16, §2, 37
2001 amendment to subsection 2, paragraph a, takes effect January 1, 2002; 2001 Acts, ch 16, §37
For future amendment to subsection 2, paragraph a, effective July 1, 2002, see 2001 Acts, ch 55, §26, 38
Subsection 2, paragraph a amended

272C.4 Duties of board.

Each licensing board shall have the following duties in addition to other duties specified by this chapter or elsewhere in the Code:

1. Establish procedures by which complaints which relate to licensure or to licensee discipline shall be received and reviewed by the board;

2. Establish procedures by which disputes between licensees and clients which result in judgments or settlements in or of malpractice claims or actions shall be investigated by the board;

3. Establish procedures by which any recommendation taken by a peer review committee shall be reported to and reviewed by the board if a peer review committee is established;

4. Establish procedures for registration with the board of peer review committees if a peer re-

view committee is established;

5. Define by rule those recommendations of peer review committees which shall constitute disciplinary recommendations which must be reported to the board if a peer review committee is established;

6. Define by rule acts or omissions which are grounds for revocation or suspension of a license under section 147.55, 148.6, 148B.7, 152.10, 153.34, 154A.24, 169.13, 455B.191, 542B.21, 542C.21, 543B.29, 544A.13, 544B.15, or 602.3203 or chapter 151, 155, 507B, or 522B, as applicable, and to define by rule acts or omissions which constitute negligence, careless acts or omissions within the meaning of section 272C.3, subsection 2, paragraph "b", which licensees are required to report to the board pursuant to section 272C.9, subsection 2;

7. Establish the procedures by which licensees shall report those acts or omissions specified by the board pursuant to subsection 6;

8. Give written notice to another licensing board or to a hospital licensing agency if evidence received by the board either alleges or constitutes reasonable cause to believe the existence of an act or omission which is subject to discipline by that other board or agency;

9. Require each health care licensing board to file with the Iowa department of public health a copy of each decision of the board imposing licensee discipline. Each nonhealth-care board shall have on file a copy of each decision of the board imposing licensee discipline which copy shall be properly dated and shall be in simple language and in the most concise form consistent with clearness and comprehensiveness of subject matter.

The commissioner of insurance shall by rule in consultation with the licensing boards enumerated in section 272C.1, require insurance carriers which insure professional and occupational licensees for acts or omissions which constitute negligence, careless acts or omissions in the practice of a profession or occupation to file reports with the commissioner of insurance. The reports shall include information pertaining to incidents by a licensee which may affect the licensee as defined by rule, involving an insured of the insurer. The commissioner of insurance shall forward reports pursuant to this section to the appropriate licensing board.

2001 Acts, ch 16, §3, 37
2001 amendment to subsection 6 takes effect January 1, 2001; 2001 Acts, ch 16, §37

For future amendment to subsection 6 effective July 1, 2002, see 2001 Acts, ch 55, §27, 38
Subsection 6 amended

272C.5 Licensee disciplinary procedure — rulemaking delegation.

1. Each licensing board may establish by rule licensee disciplinary procedures. Each licensing board may impose licensee discipline under these procedures.

2. Rules promulgated under subsection 1 of this section:

a. Shall comply with the provisions of chapter 17A.

b. Shall designate who may or shall initiate a licensee disciplinary investigation and a licensee disciplinary proceeding, and who shall prosecute a disciplinary proceeding and under what conditions, and shall state the procedures for review by the licensing board of findings of fact if a majority of the licensing board does not hear the disciplinary proceeding.

c. Shall state whether the procedures are an alternative to or an addition to the procedures stated in sections 147.58 through 147.71, 148.6 through 148.9, 152.10 and 152.11, 153.23 through 153.30, 153.33, and 154A.23, 542B.22, 542C.23, 543B.35, 543B.36, 544B.16.

d. Shall specify methods by which the final decisions of the board relating to disciplinary proceedings shall be published.

For future amendment to subsection 2, paragraph c, effective July 1, 2002, see 2001 Acts, ch 55, §28, 38

Section not amended; footnote added

272C.6 Hearings — power of subpoena — decisions.

1. Disciplinary hearings held pursuant to this chapter shall be heard by the board sitting as the hearing panel, or by a panel of not less than three board members who are licensed in the profession, or by a panel of not less than three members appointed pursuant to subsection 2. Notwithstanding chapters 17A and 21 a disciplinary hearing shall be open to the public at the discretion of the licensee.

2. When, in the opinion of a majority of the board, it is desirable to obtain specialists within an area of practice of a profession when holding disciplinary hearings, a licensing board may appoint licensees not having a conflict of interest to make findings of fact and to report to the board. Such findings shall not include any recommendation for or against licensee discipline.

3. The presiding officer of a hearing panel may issue subpoenas pursuant to rules of the board on behalf of the board or on behalf of the licensee. A licensee may have subpoenas issued on the licensee's behalf. A subpoena issued under the authority of a licensing board may compel the attendance of witnesses and the production of professional records, books, papers, correspondence and other records, whether or not privileged or confidential under law, which are deemed necessary as evidence in connection with a disciplinary proceeding.

Nothing in this subsection shall be deemed to enable a licensing board to compel an attorney of the licensee, or stenographer or confidential clerk of the attorney, to disclose any information when privileged against disclosure by section 622.10. In the event of a refusal to obey a subpoena, the licensing board may petition the district court for its

enforcement. Upon proper showing, the district court shall order the person to obey the subpoena, and if the person fails to obey the order of the court the person may be found guilty of contempt of court. The presiding officer of a hearing panel may also administer oaths and affirmations, take or order that depositions be taken, and pursuant to rules of the board, grant immunity to a witness from disciplinary proceedings initiated either by the board or by other state agencies which might otherwise result from the testimony to be given by the witness to the panel.

4. In order to assure a free flow of information for accomplishing the purposes of this section, and notwithstanding section 622.10, all complaint files, investigation files, other investigation reports, and other investigative information in the possession of a licensing board or peer review committee acting under the authority of a licensing board or its employees or agents which relates to licensee discipline are privileged and confidential, and are not subject to discovery, subpoena, or other means of legal compulsion for their release to a person other than the licensee and the boards, their employees and agents involved in licensee discipline, and are not admissible in evidence in a judicial or administrative proceeding other than the proceeding involving licensee discipline. However, investigative information in the possession of a licensing board or its employees or agents which relates to licensee discipline may be disclosed to appropriate licensing authorities within this state, the appropriate licensing authority in another state, the coordinated licensure information system provided for in the nurse licensure compact contained in section 152E.1, the District of Columbia, or a territory or country in which the licensee is licensed or has applied for a license. If the investigative information in the possession of a licensing board or its employees or agents indicates a crime has been committed, the information shall be reported to the proper law enforcement agency. However, a final written decision and finding of fact of a licensing board in a disciplinary proceeding, including a decision referred to in section 272C.3, subsection 4, is a public record.

Pursuant to the provisions of section 17A.19, subsection 6, a licensing board upon an appeal by the licensee of the decision by the licensing board, shall transmit the entire record of the contested case to the reviewing court.

Notwithstanding the provisions of section 17A.19, subsection 6, if a waiver of privilege has been involuntary and evidence has been received at a disciplinary hearing, the court shall order withheld the identity of the individual whose privilege was waived.

5. Licensee discipline shall not be imposed except upon the affirmative vote of a majority of the licensing board.

6. A board created pursuant to chapter 147,

154A, 155, 169, 542B, 542C, 543B, 543D, 544A, or 544B may charge a fee not to exceed seventy-five dollars for conducting a disciplinary hearing pursuant to this chapter which results in disciplinary action taken against the licensee by the board, and in addition to the fee, may recover from a licensee the costs for the following procedures and associated personnel:

- a. Transcript.
- b. Witness fees and expenses.
- c. Depositions.
- d. Medical examination fees incurred relating to a person licensed under chapter 147, 154A, 155, or 169.

The department of agriculture and land stewardship, the department of commerce, and the Iowa department of public health shall each adopt rules pursuant to chapter 17A which provide for the allocation of fees and costs collected pursuant to this section to the board under its jurisdiction collecting the fees and costs. The fees and costs shall be considered repayment receipts as defined in section 8.2.

For future amendment to subsection 6 effective July 1, 2002, see 2001 Acts, ch 55, §29, 38
Section not amended; footnote added

272C.9 Duties of licensees.

1. Each licensee of a licensing board, as a condition of licensure, is under a duty to submit to a physical or mental examination when directed in writing by the board for cause. All objections shall be waived as to the admissibility of the examining physician's testimony or reports on the grounds of privileged communications. The medical testimony or report shall not be used against the licensee in any proceeding other than one relating to licensee discipline by the board, or one commenced in district court for revocation of the licensee's privileges. The licensing board, upon probable cause, shall have the authority to order physical or mental examination, and upon refusal of the licensee to submit to the examination the licensing board may order that the allegations pursuant to which the order of physical or mental examination was made shall be taken to be established.

2. A licensee has a continuing duty to report to the licensing board by whom the person is licensed those acts or omissions specified by rule of the board pursuant to section 272C.4, subsection 6, when committed by another person licensed by the same licensing board. This subsection does not apply to licensees under chapter 542C when the observations are a result of participation in programs of practice review, peer review and quality review conducted by professional organizations of certified public accountants, for educational purposes and approved by the accountancy examining board.

3. A licensee shall have a continuing duty and obligation, as a condition of licensure, to report to the licensing board by which the licensee is li-

censed every adverse judgment in a professional or occupational malpractice action to which the licensee is a party, and every settlement of a claim against the licensee alleging malpractice.

4. A licensee who willfully fails to comply with subsection 2 or 3 of this section commits a viola-

tion of this chapter for which licensee discipline may be imposed.

For future amendment to subsection 2 effective July 1, 2002, see 2001 Acts, ch 55, §30, 38

Section not amended; footnote added

CHAPTER 273

AREA EDUCATION AGENCIES

SUBCHAPTER I GENERAL PROVISIONS

273.2 Area education agencies established — powers — services and programs.

1. 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.

2. 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.

3. 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.

4. The area education agency board shall provide for special education services and media ser-

vices 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 board shall assist in facilitating interlibrary loans of materials between school districts and other libraries. Each area education agency shall include as a member of its media center advisory committee a library service area trustee or library service area staff member, who is appointed to the committee by the commission of libraries.

5. 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:

a. 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.

b. Educational data processing pursuant to section 256.9, subsection 11.

c. 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.

d. 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.

e. 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.

6. 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.

2001 Acts, ch 158, §23
Subsection 4 amended

273.10 Accreditation of area education programs.

1. The department of education shall develop, in consultation with the area education agencies, and establish an accreditation process for area education agencies by July 1, 1997. At a minimum, the accreditation process shall consist of the following:

a. The timely submission by an area education agency of information required by the department on forms provided by the department.

b. The use of an accreditation team appointed by the director of the department of education to conduct an evaluation, including an on-site visit of each area education agency. The team shall include, but is not limited to, department staff members, representatives from the school districts served by the area education agency being evaluated, area education agency staff members from area education agencies other than the area education agency that conducts the programs being evaluated for accreditation, and other team members with expertise as deemed appropriate by the director.

2. Prior to a visit to an area education agency, the accreditation team shall have access to that area education agency's program audit report filed with the department. After a visit to an area education agency, the accreditation team shall determine whether the accreditation standards for a program have been met and shall make a report to the director and the state board, together with a recommendation as to whether the programs of the area education agency should receive initial accreditation or remain accredited. The accreditation team shall report strengths and weaknesses, if any, for each accreditation standard and shall advise the area education agency of available resources and technical assistance to further enhance the strengths and improve areas of weakness. An area education agency may respond to the accreditation team's report.

3. The state board of education shall determine whether a program of an area education agency shall receive initial accreditation or shall remain accredited. Approval of area education agency programs by the state board shall be based upon the recommendation of the director of the department of education after a study of the factual

and evaluative evidence on record about each area education agency program in terms of the accreditation standards adopted by the state board.

Approval, if granted, shall be for a term of five years. However, the state board may grant conditional approval for a term of less than five years if conditions warrant.

4. If the state board of education determines that an area education agency's program does not meet accreditation standards, the director of the department of education, in cooperation with the board of directors of the area education agency, shall establish a remediation plan prescribing the procedures that must be taken to correct deficiencies in meeting the program standards, and shall establish a deadline date for correction of the deficiencies. The remediation plan is subject to the approval of the state board.

5. The area education agency program shall remain accredited during the implementation of the remediation plan. The accreditation team shall visit the area education agency and shall determine whether the deficiencies in the standards for the program have been corrected and shall make a report and recommendation to the director and the state board of education. The state board shall review the report and recommendation and shall determine whether the deficiencies in the program have been corrected.

6. If the deficiencies in an area education program have not been corrected, the agency board shall take one of the following actions within sixty days from removal of accreditation:

a. Merge the deficient program with a program from another accredited area education agency.

b. Contract with another area education agency or other public educational institution for purposes of program delivery.

The rules developed by the state board of education for the accreditation process shall include provisions for removal of accreditation, including provisions for proper notice to the administrator of the area education agency, each member of the board of directors of the area education agency, and the superintendents and administrators of the schools of the districts served by the area education agency.

2001 Acts, ch 114, §1
Subsection 3, unnumbered paragraph 2 amended

273.11 Standards for accrediting area education programs.

1. The state board of education shall develop standards and rules for the accreditation of area education agencies by July 1, 1997. Standards shall be general in nature, but at a minimum shall identify requirements addressing the services provided by each division, as well as identifying indicators of quality that will permit area education agencies, school districts, the department of education, and the general public to judge accurately

the effectiveness of area education agency services.

2. Standards developed shall include, but are not limited to, the following:

a. Support for school-community planning, including a means of assessing needs, establishing shared direction and implementing program plans and reporting progress.

b. Professional development programs that respond to current needs.

c. Support for curriculum development, instruction, and assessment for reading, language arts, math and science, using research-based methodologies.

d. Special education compliance and support.

e. Management services, including financial reporting and purchasing as requested and funded by local districts.

f. Support for instructional media services that supplement and support local district media centers and services.

g. Support for school technology planning and staff development for implementing instructional technologies.

h. A program and services evaluation and reporting system.

i. Support for school district libraries in accordance with section 273.2, subsection 4.

2001 Acts, ch 158, §24

Subsection 2, NEW paragraph i

273.14 through 273.19 Reserved.

SUBCHAPTER II

REORGANIZATION OR DISSOLUTION

273.20 Definitions.

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

1. “*Affected area education agency*” or “*affected agency*” means an area education agency whose board of directors is contemplating or engaged in reorganization efforts in accordance with this subchapter.

2. “*Affected board*” means the board of directors of an area education agency that is contemplating or engaged in reorganization efforts in accordance with this subchapter.

3. “*Department*” means the department of education.

4. “*State board*” means the state board of education.

2001 Acts, ch 114, §2

NEW section

273.21 Voluntary reorganization.

1. Two or more area education agencies may voluntarily reorganize under this subchapter if the area education agencies are contiguous, a majority of the members of each of the affected boards approve the reorganization, and the reorganiza-

tion plan submitted to the state board pursuant to subsection 3 is approved by the state board.

2. If twenty percent or more of the school districts within an affected area education agency file a petition by March 1 with the affected area education agency board to consider reorganization, the affected board shall consider the request and vote on the petition. If a majority of the affected board members vote to study the reorganization of the affected area education agency, the affected board shall immediately begin the study to consider reorganization effective by July 1 of the next year.

3. The affected boards contemplating a voluntary reorganization shall do the following:

a. Develop detailed studies of the facilities, property, services, staffing necessities, equipment, programs, and other capabilities available in each of the affected area education agencies for the purpose of providing for the reorganization of the area education agencies in order to effect more economical operation and the attainment of higher standards of educational services for the schools.

b. Survey the school districts within the affected area education agencies to determine the districts’ current and future programs and services, professional development, and technology needs.

c. Consult with the officials of school districts within the affected area and other citizens and periodically hold public hearings during the development of a plan for reorganization, as well as a public hearing on the final plan to be submitted to the department.

d. Consult with the director of the department of education in the development of surveys and plans. The director of the department of education shall provide assistance and advice to the affected area education agency boards as requested.

e. Develop a reorganization plan that demonstrates improved efficiency and effectiveness of programs to meet accreditation standards, includes a preliminary budget for reorganized areas, documents public comment from the public hearings held pursuant to paragraph “*c*”, and provides for a board of directors, and the number of members that the board shall consist of, in accordance with section 273.8.

f. Set forth the assets and liabilities of the affected area education agencies, which shall become the responsibility of the board of directors of the newly formed area education agency on the effective date of the reorganization.

g. Transmit the completed plan to the state board by November 1.

4. The state board shall review the reorganization plan and shall, prior to February 1, either approve the plan or return the plan with the state board’s recommendations. An unapproved plan may be resubmitted with modifications to the department not later than February 10. An approved plan shall take effect on July 1 of the fiscal

year following the date of approval by the state board.

2001 Acts, ch 114, §3
NEW section

273.22 Contracts of new area education agency.

1. The terms of employment of the administrator and staff of affected area education agencies for the school year beginning with the effective date of the formation of the new area education agency shall not be affected by the formation of the new area education agency, except in accordance with the provisions of sections 279.15 through 279.18, and 279.24, and the authority and responsibility to offer new contracts or to continue, modify, or terminate existing contracts pursuant to sections 279.12, 279.13, 279.15 through 279.21, 279.23, and 279.24 for the school year beginning with the effective date of the reorganization shall be transferred from the boards of the existing area education agencies to the board of the new area education agency on the third Tuesday of January prior to the school year the reorganization is effective.

2. The collective bargaining agreement of the area education agency with the largest basic enrollment, as defined in section 257.6, for the year prior to the year the reorganization is effective, shall serve as the base agreement in the new area education agency and the employees of the other area education agencies involved in the formation of the new area education agency shall automatically be accreted to the bargaining unit of that collective bargaining agreement for purposes of negotiating the contracts for the following years without further action by the public employment relations board. If only one collective bargaining agreement is in effect among the area education agencies that are party to the reorganization, that agreement shall serve as the base agreement, and the employees of the other agencies involved in the formation of the new area education agency shall automatically be accreted to the bargaining unit of that collective bargaining agreement for purposes of negotiating the contracts for the following years without further action by the public employment relations board. The board of the newly formed area education agency, using the base agreement as its existing contract, shall bargain with the combined employees of the affected agencies for the school year beginning with the effective date of the reorganization. The bargaining shall be completed by the dates specified in section 20.17 prior to the school year in which the reorganization becomes effective or within one hundred eighty days after the organization of the new board, whichever is later. If a bargaining agreement was already concluded by the board and employees of the affected agency with the contract serving as the base agreement for the school year beginning with the effective date of the reorgani-

zation, that agreement shall be void. However, if the base agreement contains multiyear provisions affecting school years subsequent to the effective year of the reorganization, the base agreement shall remain in effect as specified in the agreement.

The provisions of the base agreement shall apply to the offering of new contracts or continuation, modification, or termination of existing contracts as provided in subsection 1.

3. The terms of a contract between the board of directors of a school district and the board of directors of an affected area education agency shall be carried out by the school board and the board of directors of the newly formed area education agency except as provided in this section.

4. The board of directors of a school district that is under a contract with an affected area education agency may petition the boards of directors of the affected area education agencies for release from the contract. If the petition receives a majority of the votes cast by the members of the boards of the affected area education agencies, the petition is approved and the contract shall be terminated on the effective date of the area education agency reorganization.

5. The board of directors of a school district that is contiguous to a newly reorganized area education agency may petition the board of directors of their current area education agency and the newly reorganized area education agency to join the newly reorganized area education agency. If both area education agency boards approve the petition, the reorganization shall take effect on July 1 of the school year following approval of the petition by the state board. A school district may appeal to the state board the decision of an area education agency board to deny the school district's petition.

6. The board of directors of a school district that is within a newly reorganized area education agency and whose school district was contiguous to another area education agency prior to the reorganization, may petition the board of directors of the newly reorganized area education agency and the contiguous area education agency to join that area education agency. If both area education agency boards approve the petition, the reorganization shall take effect on July 1 of the school year following approval of the petition by the state board. A school district may appeal to the state board the decision of an area education agency board to deny the school district's petition.

2001 Acts, ch 114, §4; 2001 Acts, ch 176, §36, 37
NEW section

273.23 Initial board.

1. A petition filed under section 273.21 shall state the number of directors on the initial board which shall be either seven or nine directors. The petition shall specify the number of directors to be retained from each area, and those numbers shall

be proportionate to the populations of the agencies. If the proportionate balance of directors among the affected agencies specified in the plan is affected by school districts petitioning to be excluded from the reorganization, or if the proposal specified in the plan does not comply with the requirement for proportionate representation, the state board shall modify the proposal. However, all area education agencies affected shall retain at least one member.

2. Prior to the organization meeting of the board of directors of the newly formed area education agency, the boards of the former area education agencies shall designate directors to be retained as members to serve on the initial board of the newly formed area education agency. A vacancy occurs if an insufficient number of former board members reside in the newly formed area education agency's boundaries or if an insufficient number of former board members are willing to serve on the board of the newly formed area education agency. Vacancies, as defined in section 277.29, in the membership of the newly formed area education agency board shall be filled for the unexpired portion of the term at a special director district convention called and conducted in the manner provided in section 273.8 for regular director district conventions.

3. Prior to the effective date of the reorganization, the initial board shall call a director district convention under the provisions of section 273.8, subsection 2, for the purpose of electing a board for the reorganized area education agency. The new board shall have control of the employment of all personnel for the newly formed area education agency for the ensuing school year. Following the organization of the new board, the board shall have authority to establish policy, enter into contracts, and complete such planning and take such action as is essential for the efficient management of the newly formed area education agency.

4. The initial board of the newly formed district shall appoint an acting administrator and an acting board secretary. The appointment of the acting administrator shall not be subject to the continuing contract provisions of sections 279.20, 279.23, and 279.24.

5. The initial board of the newly formed agency shall prepare an annual budget estimating income and expenditures for programs and services as provided in sections 273.1 through 273.9 and chapter 256B within the limits of funds provided under section 256B.9 and chapter 257. The board shall give notice of a public hearing on the proposed budget by publication in an official county newspaper in each county in the territory of the area education agency in which the principal place of business of a school district that is a part of the area education agency is located. The notice shall specify the date, which shall not be later than March 1, the time, and the location of the public hearing. The proposed budget as approved

by the board shall be submitted to the state board, on forms provided by the department, no later than March 15 for approval. The state board shall review the proposed budget of the newly formed area education agency and shall, before April 1, either grant approval or return the budget without approval with comments of the state board included. An unapproved budget shall be resubmitted to the state board for final approval not later than April 15. The state board shall give final approval only to budgets submitted by area education agencies accredited by the state board or that have been given conditional accreditation by the state board.

6. For the school year beginning on the effective date of an area education agency reorganization as provided in this subchapter, the media services cost per pupil as determined under section 257.37 for all districts in a newly formed area education agency for the budget year shall be the highest amount of media services cost per pupil for any of the affected area education agencies.

7. For the school year beginning on the effective date of an area education agency reorganization as provided in this subchapter, the educational services cost per pupil as determined under section 257.37 for all districts in a newly formed area education agency for the budget year shall be the highest amount of educational services cost per pupil for any of the affected area education agencies.

8. For the school year beginning on the effective date of an area education agency reorganization as provided in this subchapter, the special education support services cost per pupil shall be based upon the combined budgets for special education support services of the area education agencies that reorganized to form the newly formed area education agency, divided by the total of the weighted enrollment for special education support services in the reorganized area education agency for the budget year.

Within one year of the effective date of the reorganization, a newly formed area education agency shall meet the accreditation requirements set forth in section 273.10, and the standards set forth in section 273.11. The newly formed area education agency shall be considered accredited for purposes of budget approval by the state board pursuant to section 273.3. The state board shall inform the newly formed area education agency of the accreditation on-site visit schedule.

2001 Acts, ch 114, §5
NEW section

273.24 Commission to dissolve area education agency.

1. As an alternative to area education agency reorganization prescribed in this subchapter, the board of directors of an area education agency may establish an area education agency dissolution commission to prepare a proposal of dissolution of

the area education agency and attachment of all of the area education agency to one or more contiguous area education agencies and to include in the proposal a division of the assets and liabilities of the dissolving area education agency. If twenty percent or more of the school districts within an area education agency file a petition by March 1 with the area education agency board to consider dissolving, the area education agency board shall consider the request and vote on the petition. If a majority of the board members vote to study dissolving the area education agency, the agency board shall immediately begin a study to consider such action effective by July 1 of the next calendar year, or the area education agency board may establish a dissolution commission.

2. An area education agency dissolution commission established by the board of directors of an area education agency shall consist of a minimum of seven members appointed by the board of directors of the area education agency 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 vote on the proposal. Members of the dissolution commission must be board members of school districts within the area served, not more than three of whom may be members of the board of directors of the area education agency. Members shall be appointed from throughout the area served and should represent the various school districts present in the area served.

3. 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.

4. The board of the area education agency shall certify to the department of education 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 elements present in the school districts that the area serves.

2001 Acts, ch 114, §6
NEW section

273.25 Dissolution commission meetings.

The commission shall hold an organizational meeting not more than fifteen days after its appointment and shall elect a chairperson and vice chairperson from its membership. Thereafter the commission may meet as often as deemed necessary upon the call of the chairperson or a majority of the commission members.

The commission shall request statements from contiguous area education agencies outlining each agency's willingness to accept attachments of the affected area education agency to the contiguous agencies and what conditions, if any, the contiguous agency recommends. The commission shall meet with boards of contiguous area education agencies and with boards of directors of the af-

ected school districts to the extent possible in drawing up the dissolution proposal. The commission may seek assistance from the department of education.

2001 Acts, ch 114, §7
NEW section

273.26 Dissolution proposal.

Not later than one year following the date of the organizational meeting of the commission, the commission shall send a copy of its dissolution proposal to the affected area education agency board or shall inform the affected area education agency board that it cannot agree upon a dissolution proposal. The commission shall also send a copy of the dissolution proposal by certified mail to the boards of directors of all school districts and other area education agencies affected. If the board of a school district or the board of an area education agency affected by the dissolution proposal objects to the proposal, either board shall send its objections in writing to the commission within ten days following receipt of the dissolution proposal. The commission may consider the objections and may modify the dissolution proposal. If the dissolution proposal is modified, the commission shall notify by certified mail the boards of directors of all area education agencies to which an area of the affected area education agency will be attached and shall notify by certified mail the board of directors of all school districts in the affected area education agencies.

If the commission cannot agree upon a dissolution proposal prior to the expiration of its term, the affected area education agency board may appoint a new commission.

2001 Acts, ch 114, §8
NEW section

273.27 Hearing — vote — state board approval.

1. Within ten days following the filing of the dissolution proposal with the affected area education agency board, the affected board shall fix a date for a hearing on the proposal which shall not be more than sixty days after the dissolution petition was filed with the affected board. The affected board shall publish notice of the date, time, and location of the hearing at least ten days prior to the date of the hearing by one publication in a newspaper in general circulation in the area. The notice shall include the contents of the dissolution proposal. Representatives of school districts in the area served may present evidence and arguments at the hearing. The president of the affected board shall preside at the hearing. The affected board shall review testimony from the hearing and shall adopt or amend and adopt the dissolution proposal.

The affected board shall notify by certified mail the boards of directors of all school districts in the affected area education agency and the contiguous area education agencies to which the districts of

the affected area education agency will be attached and the director of the department of education of the contents of the dissolution proposal adopted by the affected board.

2. Within thirty days of the hearing, the affected board shall call a director district convention, which shall include the boards of directors in the area served by the area education agencies to which an area of the affected area education agency will be attached under the dissolution proposal, for the purpose of voting on the dissolution proposal.

3. If the dissolution proposal is approved by a

majority of all directors voting on the proposal, the proposal shall be forwarded to the state board by November 1. The state board shall review the dissolution plan proposal and shall, prior to January 1, either grant approval for the proposal or return the proposal with recommendations. An unapproved proposal may be resubmitted with modifications to the state board not later than February 1. A proposal shall take effect on July 1 of the fiscal year following the date of approval by the state board.

2001 Acts, ch 114, §9
NEW section

CHAPTER 275

REORGANIZATION OF SCHOOL DISTRICTS

275.8 Cooperation of department of education — planning joint districts.

Planning of joint districts shall be conducted in the same manner as planning for single districts, except as provided in this section. Studies and surveys relating to the planning of joint districts shall be filed with the area education agency in which one of the districts is located which has the greatest taxable property base. In the case of controversy over the planning of joint districts, the matter shall be submitted to the director of the department of education. Judicial review of the director's decision may be sought in accordance with the terms of the Iowa administrative procedure Act, chapter 17A. Notwithstanding the terms of that Act, petitions for judicial review must be filed within thirty days after the decision of the director. "Joint districts" means districts that lie in two or more adjacent area education agencies.

For purposes of this chapter the planning of joint districts is defined to include all of the following acts:

1. Preparation of a written joint plan in which contiguous territory in two or more area education agencies is considered as a part of a potential school district in the area education agency on behalf of which such plan is filed with the department of education by the area education agency board.

2. Adoption of the written joint plan at a joint session of the several area education agency boards in whose areas the territory is situated. A quorum of each of the boards is necessary to transact business. Votes shall be taken in the manner prescribed in section 275.16.

3. Filing said plan with the department of education.

For purposes of subsection 1 hereof, joint planning shall be evidenced by filing the following items with the department of education:

a. A plat of the entire area of such potential

district.

b. A statement of the number of pupils residing within the area of said potential district enrolled in public schools in the preceding school year.

c. A statement of the assessed valuation of taxable property located within such potential district.

d. An affidavit signed on behalf of each of said boards of directors of area education agencies by a member of such board stating the boundaries as shown on such plat have been agreed upon by the respective boards as a part of the overall plan of school district reorganization of each such school.

2001 Acts, ch 24, §43, 44
Subsection 1 amended
Subsection 3, unnumbered paragraphs 1 and 2 amended

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 eligible electors residing in each existing school district or portion affected equal in number to at least twenty percent of the number of registered voters in the school district or portion affected, or four hundred eligible electors, whichever is the smaller number.

2. The petition filed under subsection 1 shall also state the name of the proposed school district and the number of directors which may be either

five or seven and the method of election of the school directors of the proposed district. The method of election of the directors shall be one of the following optional plans:

a. Election at large from the entire district by the electors of the entire district.

b. Division of the entire school district into designated geographical single director or multi-director subdistricts on the basis of population for each director, to be known as director districts, each of which director districts shall be represented on the school board by one or more directors who shall be residents of the director district but who shall be elected by the vote of the electors of the entire school district. The boundaries of the director districts and the area and population included within each district shall be such as justice, equity, and the interests of the people may require. Changes in the boundaries of director districts shall not be made during a period commencing sixty days prior to the date of the annual school election. Insofar as may be practicable, the boundaries of the districts shall follow established political or natural geographical divisions.

c. Election of not more than one-half of the total number of school directors at large from the entire district and the remaining directors from and as residents of designated single-member or multi-member director districts into which the entire school district shall be divided on the basis of population for each director. In such case, all directors shall be elected by the electors of the entire school district. Changes in the boundaries of director districts shall not be made during a period commencing sixty days prior to the date of the annual school election.

d. Division of the entire school district into designated geographical single director or multi-director subdistricts on the basis of population for each director, to be known as director districts, each of which director districts shall be represented on the school board by one or more directors who shall be residents of the director district and who shall be elected by the voters of the director district. Place of voting in the director districts shall be designated by the commissioner of elections. Changes in the boundaries of director districts shall not be made during a period commencing sixty days prior to the date of the annual school election.

e. In districts having seven directors, election of three directors at large by the electors of the entire district, one at each annual school election, and election of the remaining directors as residents of and by the electors of individual geographic subdistricts established on the basis of population and identified as director districts. Boundaries of the subdistricts shall follow precinct boundaries, insofar as practicable, and shall not be changed less than sixty days prior to the annual school election.

3. If the petition proposes the division of the

school district into director districts, the boundaries of 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.

2001 Acts, ch 56, §12
Subsection 1 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 dissolution 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 eligible electors 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 eligible electors residing in the school district equal in number to at least twenty percent of the registered voters in the school district.

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 commis-

sion 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.

2001 Acts, ch 56, §13
Unnumbered paragraph 1 amended

CHAPTER 277

SCHOOL ELECTIONS

277.27 Qualification.

A member of the board shall, at the time of election or appointment, be an eligible elector of the corporation or subdistrict. Notwithstanding any contrary provision of the Code, a member of the board of directors of a school district shall not re-

ceive compensation directly from the school board unless the compensation is for part-time or temporary employment and does not exceed the limitation set forth in section 279.7A.

2001 Acts, ch 53, §1
Section amended

CHAPTER 279

DIRECTORS — POWERS AND DUTIES

279.3 Appointment of secretary and treasurer.

The board shall appoint a secretary who shall not be a teacher employed by the board but may be another employee of the board. The board shall also appoint a treasurer who may be another employee of the board. However, the board may appoint one person to serve as the secretary and the treasurer.

These officers shall be appointed from outside the membership of the board for terms of one year beginning with the date of appointment, and the appointment and qualification shall be entered of record in the minutes of the secretary. They shall qualify within ten days following appointment by taking the oath of office in the manner required by section 277.28 and filing a bond as required by section 291.2 and shall hold office until their successors are appointed and qualified.

2001 Acts, ch 47, §1
Unnumbered paragraph 1 amended

279.7A Interest in public contracts prohibited — exceptions.

A member of the board of directors of a school corporation shall not have an interest, direct or indirect, in a contract for the purchase of goods, including materials and profits, and the performance of services for the director's school corporation. A contract entered into in violation of this section is void. This section does not apply to contracts for the purchase of goods or services which benefit a director, or to compensation for part-time or temporary employment which benefits a direc-

tor, if the benefit to the director does not exceed two thousand five hundred dollars in a fiscal year, and contracts made by a school board, upon competitive bid in writing, publicly invited and opened.

2001 Acts, ch 53, §2
Section amended

279.13 Contracts with teachers — automatic continuation.

1. Contracts with teachers, which for the purpose of this section means all licensed employees of a school district and nurses employed by the board, excluding superintendents, assistant superintendents, principals, and assistant principals, shall be in writing and shall state the number of contract days, the annual compensation to be paid, and any other matters as may be mutually agreed upon. The contract may include employment for a term not exceeding the ensuing school year, except as otherwise authorized.

The contract is invalid if the teacher is under contract with another board of directors to teach during the same time period until a release from the other contract is achieved. The contract shall be signed by the president of the board, or by the superintendent if the board has adopted a policy authorizing the superintendent to sign teaching contracts, when tendered, and after it is signed by the teacher, the contract shall be filed with the secretary of the board before the teacher enters into performance under the contract.

2. The contract shall remain in force and effect for the period stated in the contract and shall be automatically continued for equivalent periods ex-

cept as modified or terminated by mutual agreement of the board of directors and the teacher or as terminated in accordance with the provisions specified in this chapter. A contract shall not be offered by the employing board to a teacher under its jurisdiction prior to March 15 of any year. A teacher who has not accepted a contract for the ensuing school year tendered by the employing board may resign effective at the end of the current school year by filing a written resignation with the secretary of the board. The resignation must be filed not later than the last day of the current school year or the date specified by the employing board for return of the contract, whichever date occurs first. However, a teacher shall not be required to return a contract to the board or to resign less than twenty-one days after the contract has been offered.

3. If the provisions of a contract executed or automatically renewed under this section conflict with a collective bargaining agreement negotiated under chapter 20 and effective when the contract is executed or renewed, the provisions of the collective bargaining agreement shall prevail.

2001 Acts, ch 159, §10

Subsection 1, unnumbered paragraph 2 amended

279.16 Private hearing — decision — record.

1. The participants at the private hearing shall be at least a majority of the members of the board, their legal representatives, if any, the superintendent, the superintendent's designated representatives, if any, the teacher's immediate supervisor, the teacher, the teacher's representatives, if any, and the witnesses for the parties. The evidence at the private hearing shall be limited to the specific reasons stated in the superintendent's notice of recommendation of termination. No participant in the hearing shall be liable for any damages to any person if any statement at the hearing is determined to be erroneous as long as the statement was made in good faith. The superintendent shall present evidence and argument on all issues involved and the teacher may cross-examine, respond and present evidence and argument in the teacher's behalf relevant to all issues involved. Evidence may be by stipulation of the parties and informal settlement may be made by stipulation, consent, or default or by any other method agreed upon by the parties in writing. The board shall employ a certified shorthand reporter to keep a record of the private hearing. The proceedings or any part thereof shall be transcribed at the request of either party with the expense of transcription charged to the requesting party.

2. The presiding officer of the board may administer oaths in the same manner and with like effect and under the same penalties as in the case of magistrates exercising criminal or civil jurisdiction. The board shall cause subpoenas to be issued for such witnesses and the production of such

books and papers as either the board or the teacher may designate. The subpoenas shall be signed by the presiding officer of the board.

3. In case a witness is duly subpoenaed and refuses to attend, or in case a witness appears and refuses to testify or to produce required books or papers, the board shall, in writing, report such refusal to the district court of the county in which the administrative office of the school district is located, and the court shall proceed with the person or witness as though the refusal had occurred in a proceeding legally pending before the court.

4. The board shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure, but it shall hold the hearing in such manner as is best suited to ascertain and conserve the substantial rights of the parties. Process and procedure under sections 279.13 to 279.19 shall be as summary as reasonably may be.

5. At the conclusion of the private hearing, the superintendent and the teacher may file written briefs and arguments with the board within three days or such other time as may be agreed upon.

6. If the teacher fails to timely request a private hearing or does not appear at the private hearing, the board may proceed and make a determination upon the superintendent's recommendation. If the teacher fails to timely file a request for a private hearing, the determination shall be not later than May 31. If the teacher fails to appear at the private hearing, the determination shall be not later than five days after the scheduled date for the private hearing. The board shall convene in open session and by roll call vote determine the termination or continuance of the teacher's contract and, if the board votes to continue the teacher's contract, whether to suspend the teacher with or without pay for a period specified by the board.

7. Within five days after the private hearing, the board shall, in executive session, meet to make a final decision upon the recommendation and the evidence as herein provided. The board shall also consider any written brief and arguments submitted by the superintendent and the teacher.

8. The record for a private hearing shall include:

a. All pleadings, motions and intermediate rulings.

b. All evidence received or considered and all other submissions.

c. A statement of all matters officially noticed.

d. All questions and offers of proof, objections and rulings thereon.

e. All findings and exceptions.

f. Any decision, opinion, or conclusion by the board.

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

9. The decision of the board shall be in writing and shall include findings of fact and conclusions

of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts and supporting the findings. Each conclusion of law shall be supported by cited authority or by reasoned opinion.

10. When the board has reached a decision, opinion, or conclusion, it shall convene in open meeting and by roll call vote determine the continuance or discontinuance of the teacher's contract and, if the board votes to continue the teacher's contract, whether to suspend the teacher with or without pay for a period specified by the board. The record of the private conference and findings of fact and exceptions shall be exempt from the provisions of chapter 22. The secretary of the board shall immediately mail notice of the board's action to the teacher.

2001 Acts, ch 62, §1
Former unnumbered paragraphs 1 – 7 redesignated as subsections 1 – 7
Subsection 6 amended
Former unnumbered paragraph 8 and subsections 1 – 7 redesignated as subsection 8 and paragraphs a through g, respectively
Former unnumbered paragraphs 9 and 10 redesignated as subsections 9 and 10
Subsection 10 amended

279.19 Probationary period.

The first three consecutive years of employment of a teacher in the same school district are a probationary period. However, if the teacher has successfully completed a probationary period of employment for another school district located in Iowa, the probationary period in the current district of employment shall not exceed one year. A board of directors may waive the probationary period for any teacher who previously has served a probationary period in another school district and the board may extend the probationary period for an additional year with the consent of the teacher.

In the case of the termination of a probationary teacher's contract, the provisions of sections 279.15 and 279.16 shall apply. However, if the probationary teacher is a beginning teacher who fails to successfully complete a beginning teacher mentoring and induction program in accordance with chapter 284, the provisions of sections 279.17 and 279.18 shall also apply.

The board's decision shall be final and binding unless the termination was based upon an alleged violation of a constitutionally guaranteed right of the teacher or an alleged violation of public employee rights of the teacher under section 20.10.

Notwithstanding any provision to the contrary, the grievance procedures of section 20.18 relating to job performance or job retention shall not apply to a teacher during the first two years of the teacher's probationary period. However, this paragraph shall not apply to a teacher who has successfully completed a probationary period in a school

district in Iowa.

2001 Acts, ch 161, §18
Unnumbered paragraph 2 amended

279.24 Contract with administrators — automatic continuation or termination.

1. An administrator's contract shall remain in force and effect for the period stated in the contract. The contract shall be automatically continued in force and effect for additional one-year periods beyond the end of its original term, except and until the contract is modified or terminated by mutual agreement of the board of directors and the administrator, or until terminated as provided by this section.

2. If the board of directors is considering termination of an administrator's contract, prior to any formal action, the board may arrange to meet in closed session, in accordance with the provisions of section 21.5, with the administrator and the administrator's representative. The board shall review the administrator's evaluation, review the reasons for nonrenewal, and give the administrator an opportunity to respond. If, following the closed session, the board of directors and the administrator are unable to mutually agree to a modification or termination of the administrator's contract, or the board of directors and the administrator are unable to mutually agree to enter into a one-year nonrenewable contract, the board of directors shall follow the procedures in this section.

3. An administrator may file a written resignation with the secretary of the school board on or before May 1 of each year or the date specified by the school board for return of the contract, whichever date occurs first.

4. Administrators employed in a school district for less than two consecutive years are probationary administrators. However, a school board may waive the probationary period for any administrator who has previously served a probationary period in another school district and the school board may extend the probationary period for an additional year with the consent of the administrator. If a school board determines that it should terminate a probationary administrator's contract, the school board shall notify the administrator not later than May 15 that the contract will not be renewed beyond the current year. The notice shall be in writing by letter, personally delivered, or mailed by certified mail. The notification shall be complete when received by the administrator. Within ten days after receiving the notice, the administrator may request a private conference with the school board to discuss the reasons for termination. The school board's decision to terminate a probationary administrator's contract shall be final unless the termination was based upon an alleged violation of a constitutionally guaranteed right of the administrator.

5. The school board may, by majority vote of the membership of the school board, cause the contract of an administrator to be terminated. If the school board determines that it should consider the termination of a nonprobationary administrator's contract, the following procedure shall apply:

a. On or before May 15, the administrator shall be notified in writing by a letter personally delivered or mailed by certified mail that the school board has voted to consider termination of the contract. The notification shall be complete when received by the administrator.

b. The notice shall state the specific reasons to be used by the school board for considering termination which for all administrators except superintendents shall be for just cause.

c. Within five days after receipt of the written notice that the school board has voted to consider termination of the contract, the administrator may request in writing to the secretary of the school board that the notification be forwarded to the board of educational examiners along with a request that the board of educational examiners submit a list of five qualified administrative law judges to the parties. Within three days from receipt of the list the parties shall select an administrative law judge by alternately removing a name from the list until only one name remains. The person whose name remains shall be the administrative law judge. The parties shall determine by lot which party shall remove the first name from the list. The hearing shall be held no sooner than ten days and not later than thirty days following the administrator's request unless the parties otherwise agree. If the administrator does not request a hearing, the school board, not later than May 31, may determine the continuance or discontinuance of the contract and, if the board determines to continue the administrator's contract, whether to suspend the administrator with or without pay for a period specified by the board. School board action shall be by majority roll call vote entered on the minutes of the meeting. Notice of school board action shall be personally delivered or mailed to the administrator.

d. The administrative law judge selected shall notify the secretary of the school board and the administrator in writing concerning the date, time, and location of the hearing. The school board may be represented by a legal representative, if any, and the administrator shall appear and may be represented by counsel or by representative, if any. A transcript or recording shall be made of the proceedings at the hearing. A school board member or administrator is not liable for any damage to an administrator or school board member if a statement made at the hearing is determined to be erroneous as long as the statement was made in good faith.

e. The administrative law judge shall, within ten days following the date of the hearing, make a proposed decision as to whether or not the admin-

istrator should be dismissed, and shall give a copy of the proposed decision to the administrator and the school board. Findings of fact shall be prepared by the administrative law judge. The proposed decision of the administrative law judge shall become the final decision of the school board unless within ten days after the filing of the decision the administrator files a written notice of appeal with the school board, or the school board on its own motion determines to review the decision.

f. If the administrator appeals to the school board, or if the school board determines on its own motion to review the proposed decision of the administrative law judge, a private hearing shall be held before the school board within five days after the petition for review, or motion for review, has been made or at such other time as the parties agree. The private hearing is not subject to chapter 21. The school board may hear the case *de novo* upon the record as submitted before the administrative law judge. In cases where there is an appeal from a proposed decision or where a proposed decision is reviewed on motion of the school board, an opportunity shall be afforded to each party to file exceptions, present briefs, and present oral arguments to the school board which is to render the final decision. The secretary of the school board shall give the administrator written notice of the time, place, and date of the hearing. The school board shall meet within five days after the hearing to determine the question of continuance or discontinuance of the contract and, if the board determines to continue the administrator's contract, whether to suspend the administrator with or without pay for a period specified by the board. The school board shall make findings of fact which shall be based solely on the evidence in the record and on matters officially noticed in the record.

g. The decision of the school board shall be in writing and shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Each conclusion of law shall be supported by cited authority or by reasoned opinion.

h. When the school board has reached a decision, opinion, or conclusion, it shall convene in open meeting and by roll call vote determine the continuance or discontinuance of the administrator's contract and, if the board votes to continue the administrator's contract, whether to suspend the administrator with or without pay for a period specified by the board. The record of the private conference and findings of fact and exceptions shall be exempt from the provisions of chapter 22. The secretary of the school board shall immediately personally deliver or mail notice of the school board's action to the administrator.

i. The administrator may within thirty days after notification by the school board of discontinuance of the contract appeal to the district court

of the county in which the administrative office of the school district is located.

6. The court may affirm the school board's action. The court shall reverse, modify, or grant any other appropriate relief from the school board's action, equitable or legal, and including declaratory relief, if substantial rights of the administrator have been prejudiced because the school board's action is any of the following:

- a. In violation of constitutional or statutory provisions.
- b. In excess of the statutory authority of the school board.
- c. In violation of school board policy or rule.
- d. Made upon unlawful procedure.
- e. Affected by other error of law.
- f. Unsupported by a preponderance of the evidence in the record made before the school board when that record is reviewed as a whole.
- g. Unreasonable, arbitrary, or capricious, or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

2001 Acts, ch 62, §2

Former unnumbered paragraphs 1 – 4 redesignated as subsections 1 – 4

Former unnumbered paragraphs 5 – 14 redesignated as subsection 5, unnumbered paragraph 1 and paragraphs a – i

Subsection 5, paragraphs c, f, and h amended

Former unnumbered paragraph 15 renumbered as subsection 6, unnumbered paragraph 1, and former subsections 1 – 7 redesignated as subsection 6, paragraphs a – g

279.33 Annual settlements.

At a regular or special meeting held on or after August 31 and prior to the organizational meeting held after the regular school election, the board of each school corporation shall meet, examine the books of and settle with the secretary and treasurer for the year ending on the preceding June 30, and transact other business as necessary. The treasurer at the time of settlement shall furnish the board with a sworn statement from each depository showing the balance then on deposit in the depository. If the secretary or treasurer fails to make proper reports for the settlement, the board shall take action to obtain the balance information.

2001 Acts, ch 47, §2

Section amended

279.59 Access by associations.

The board of directors of a school district shall provide not-for-profit, professional education associations that offer membership to teachers or administrators equal access to teacher or administrator mailboxes for distribution of professional literature.

2001 Acts, ch 159, §11

NEW section

CHAPTER 280

UNIFORM SCHOOL REQUIREMENTS

280.9 Career education.

The board of directors of each local public school district and the authorities in charge of each non-public school shall incorporate into the educational program, in accordance with section 256.7, subsection 21, paragraph "a", the total concept of career education to enable students to become familiar with the values of a work-oriented society. Curricular and cocurricular teaching-learning experiences from the prekindergarten level through grade twelve shall be provided for all students currently enrolled in order to develop an understanding that employment may be meaningful and satisfying. However, career education does not mean a separate vocational-technical program is required. A vocational-technical program includes units or partial units in subjects which have as their purpose to equip students with marketable skills.

Essential elements in career education shall include, but not be limited to:

- 1. Awareness of self in relation to others and the needs of society.
- 2. Exploration of employment opportunities and experience in personal decision making.
- 3. Experiences which will help students to in-

tegrate work values and work skills into their lives.

2001 Acts, ch 159, §12

Unnumbered paragraph 1 amended

280.12 School improvement advisory committee.

The board of directors of each public school district and the authorities in charge of each nonpublic school shall do the following:

- 1. Appoint a school improvement advisory committee to make recommendations to the board or authorities. The advisory committee shall consist of members representing students, parents, teachers, administrators, and representatives from the local community, which may include representatives of business, industry, labor, community agencies, higher education, or other community constituents. To the extent possible, committee membership shall have balanced representation with regard to race, gender, national origin, and disability.
- 2. Utilize the recommendations from the school improvement advisory committee to determine the following:

- a. Major educational needs.
- b. Student learning goals.
- c. Long-range and annual improvement goals that include, but are not limited to, the state indicators that address reading, mathematics, and science achievement.
- d. Desired levels of student performance.
- e. Progress toward meeting the goals set out in paragraphs “b” through “d”.

2001 Acts, ch 159, §13
Section stricken and rewritten

280.18 Student achievement goals. Repealed by 2001 Acts, ch 159, § 18.

280.19 Plans for at-risk children.

The board of directors of each public school district shall incorporate, into the kindergarten admissions program, criteria and procedures for identification and integration of at-risk children and their developmental needs. This incorporation shall be part of the comprehensive school improvement plan developed and implemented in accordance with section 256.7, subsection 21, paragraphs “a” and “c”.

2001 Acts, ch 159, §14
Section amended

280.25 Information sharing — interagency agreements.

1. The board of directors of each public school and the authorities in charge of each accredited nonpublic school shall adopt a policy and the superintendent of each public school shall adopt rules which provide that the school district or school may share information contained within a student’s permanent record pursuant to an interagency agreement with state and local agencies that are part of the juvenile justice system. These agencies include, but are not limited to, juvenile court services, the department of human services, and local law enforcement authorities. The disclosure of information shall be directly related to the juvenile justice system’s ability to effectively serve, prior to adjudication, the student whose records are being released.

2. The purpose of the agreement shall be to reduce juvenile crime by promoting cooperation and collaboration and the sharing of appropriate infor-

mation among the parties in a joint effort to improve school safety, reduce alcohol and illegal drug use, reduce truancy, reduce in-school and out-of-school suspensions, and to support alternatives to in-school and out-of-school suspensions and expulsions which provide structured and well-supervised educational programs supplemented by coordinated and appropriate services designed to correct behaviors that lead to truancy, suspension, and expulsions and to support students in successfully completing their education.

3. Information shared under the agreement shall be used solely for determining the programs and services appropriate to the needs of the juvenile or the juvenile’s family, or coordinating the delivery of programs and services to the juvenile or the juvenile’s family.

4. Information shared by the school district or school under the agreement is not admissible in any court proceedings which take place prior to a disposition hearing, unless written consent is obtained from a student’s parent, guardian, or legal or actual custodian.

5. Information shared by another party to the agreement with a school district or school pursuant to an interagency agreement shall not be used as a basis for a school disciplinary action against a student.

6. The interagency agreement shall provide, and each signatory agency to the agreement shall certify in the agreement, that confidential information shared among the parties to the agreement shall remain confidential and shall not be shared with any other person, school, school district, or agency, unless otherwise provided by law.

7. Juvenile court social records may be disclosed in accordance with section 232.147, subsection 7.

8. A school or school district entering into an interagency agreement under this section shall adopt a policy implementing the provisions of the interagency agreement. The policy shall include, but not be limited to, the provisions of the interagency agreement and the procedures to be used by the school or school district to share information from the student’s permanent record with participating agencies. The policy shall be published in the student handbook.

Section not amended; internal reference change applied

CHAPTER 284

TEACHER PERFORMANCE, COMPENSATION, AND CAREER DEVELOPMENT

Legislative intent; 2001 Acts, ch 161, §1

284.1 Student achievement and teacher quality program.

A student achievement and teacher quality program is established to promote high student

achievement. The program shall consist of the following four major elements:

1. Mentoring and induction programs that provide support for beginning teachers in accor-

dance with section 284.5.

2. Career paths with compensation levels that strengthen Iowa's ability to recruit and retain teachers.

3. Professional development designed to directly support best teaching practices.

4. Team-based variable pay that provides additional compensation when student performance improves.

2001 Acts, ch 161, §2
NEW section

284.2 Definitions.

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

1. *"Beginning teacher"* means an individual serving under an initial provisional license, issued by the board of educational examiners under chapter 272, who is assuming a position as a classroom teacher.

2. *"Classroom teacher"* means an individual who holds a valid practitioner's license and who is employed under a teaching contract with a school district or area education agency in this state to provide classroom instruction to students.

3. *"Comprehensive evaluation"* means a summative evaluation of a teacher conducted by an evaluator for purposes of performance review, or recommendation for licensure based upon models developed pursuant to section 256.9, subsection 50, and to determine whether the teacher's practice meets the school district expectations for a career, career II, or advanced level.

4. *"Department"* means the department of education.

5. *"Director"* means the director of the department of education.

6. *"Evaluator"* means an administrator or other practitioner who successfully completes an evaluator training program pursuant to section 284.10.

7. *"Mentor"* means an individual employed by a school district or area education agency as a classroom teacher or a retired teacher who holds a valid license issued under chapter 272. The individual must have a record of four years of successful teaching practice, must be employed as a classroom teacher on a nonprobationary basis, and must demonstrate professional commitment to both the improvement of teaching and learning and the development of beginning teachers.

8. *"School board"* means the board of directors of a school district or a collaboration of boards of directors of school districts.

9. *"State board"* means the state board of education.

10. *"Teacher"* means an individual holding a practitioner's license issued under chapter 272, who is employed as a teacher, librarian, media specialist, or counselor in a nonadministrative posi-

tion by a school district or area education agency pursuant to a contract issued by a board of directors under section 279.13. A teacher may be employed in both an administrative and a nonadministrative position by a board of directors and shall be considered a part-time teacher for the portion of time that the teacher is employed in a nonadministrative position. *"Teacher"* includes a licensed individual employed on a less than 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.

2001 Acts, ch 161, §3
NEW section

284.3 Iowa teaching standards.

1. For purposes of this chapter and for developing teacher evaluation criteria under chapter 279, the Iowa teaching standards are as follows:

a. Demonstrates ability to enhance academic performance and support for and implementation of the school district's student achievement goals.

b. Demonstrates competence in content knowledge appropriate to the teaching position.

c. Demonstrates competence in planning and preparing for instruction.

d. Uses strategies to deliver instruction that meets the multiple learning needs of students.

e. Uses a variety of methods to monitor student learning.

f. Demonstrates competence in classroom management.

g. Engages in professional growth.

h. Fulfills professional responsibilities established by the school district.

2. The school board and faculty shall collaborate to further define good teaching by enhancing the Iowa teaching standards in the following manner:

a. For purposes of comprehensive evaluations for beginning teachers, including the comprehensive evaluation required for the beginning teacher to progress to career teacher, the criteria shall be based upon the models developed pursuant to section 256.9, subsection 50, and established pursuant to chapter 20.

b. For purposes of comprehensive evaluations for teachers other than beginning teachers, the school board shall convene the members of the school board and representatives of the faculty, elected by the faculty, to establish criteria based upon the models developed pursuant to section 256.9, subsection 50. If the parties are unable to reach agreement by July 1, immediately after the school year in which a contract period ends, the model criteria shall become the school district's criteria.

2001 Acts, ch 161, §4
NEW section

284.4 Participation.

1. A school district is eligible to receive moneys appropriated for purposes specified in this chapter if the school board applies to the department to participate in the student achievement and teacher quality program and submits a written statement declaring the school district's willingness to do all of the following:

a. Commit and expend local moneys to improve student achievement and teacher quality.

b. Implement a beginning teacher mentoring and induction program as provided in this chapter.

c. Provide, beginning in the second year of participation, the equivalent of two or more additional contract days, outside of instruction time, than were provided in the school year preceding the first year of participation, to provide additional time for teacher career development that aligns with student learning and teacher development needs, including the integration of technology into curriculum development, in order to achieve attendance center and district-wide student achievement goals outlined in the district comprehensive school improvement plan. School districts are encouraged to develop strategies for restructuring the school calendar to provide for the most effective professional development. A school district that provides the equivalent of ten or more contract days for career development is exempt from this paragraph.

d. Adopt a teacher career development program in accordance with this chapter.

e. Adopt a teacher evaluation plan that, at minimum, requires a comprehensive evaluation of teachers in the participating district at least every five years based upon the Iowa teaching standards and requires administrators to complete evaluator training in accordance with section 284.10.

f. Adopt teacher career paths based upon demonstrated knowledge and skills in accordance with this chapter.

g. Adopt a team-based variable pay plan that rewards attendance center success upon the implementation of a statewide variable pay plan.

2. By July 1, 2003, each school district shall participate in the student achievement and teacher quality program if the general assembly appropriates moneys for purposes of the student achievement and teacher quality program established pursuant to this chapter.

2001 Acts, ch 161, §5; 2001 Acts, ch 177, §3, 15
NEW section

284.5 Beginning teacher mentoring and induction program.

1. A beginning teacher mentoring and induction program is created to promote excellence in teaching, enhance student achievement, build a supportive environment within school districts, increase the retention of promising beginning teachers, and promote the personal and professional well-being of classroom teachers. Prior to

the completion of the 2001-2002 school year, a school district shall, at a minimum, provide an approved beginning teacher mentoring and induction program for all classroom teachers who are beginning teachers.

2. The state board shall adopt rules to administer this section.

3. Notwithstanding subsection 1, a school district may provide a beginning teacher mentoring and induction program for all classroom teachers who are beginning teachers in the school years beginning July 1, 2001, and July 1, 2002, and notwithstanding section 284.4, subsection 1, a school district is eligible to receive moneys under section 284.13, subsection 1, paragraph "c", for each fiscal year of the fiscal period beginning July 1, 2001, and ending June 30, 2003, to establish a beginning teacher mentoring and induction program in accordance with this section.

4. Each participating school district shall develop an initial beginning teacher mentoring and induction plan. The plan shall be included in the school district's comprehensive school improvement plan submitted pursuant to section 256.7, subsection 21. The beginning teacher mentoring and induction plan shall, at a minimum, provide for a two-year sequence of induction program content and activities to support the Iowa teaching standards and beginning teacher professional and personal needs; mentor training that includes, at a minimum, skills of classroom demonstration and coaching, and district expectations for beginning teacher competence on Iowa teaching standards; placement of mentors and beginning teachers; the process for dissolving mentor and beginning teacher partnerships; district organizational support for release time for mentors and beginning teachers to plan, provide demonstration of classroom practices, observe teaching, and provide feedback; structure for mentor selection and assignment of mentors to beginning teachers; a district facilitator; and program evaluation.

5. A beginning teacher shall be informed by the school district, prior to the beginning teacher's participation in a mentoring and induction program, of the criteria upon which the beginning teacher shall be evaluated and of the evaluation process utilized by the school district.

6. Upon completion of the program, the beginning teacher shall be comprehensively evaluated to determine if the teacher meets expectations to move to the career level. The school district shall recommend a beginning teacher who has successfully completed the program for an educational license. A school district may offer a teacher a third year of participation in the program if, after conducting a comprehensive evaluation, the school district determines that the teacher is likely to successfully complete the mentoring and induction program by the end of the third year of eligibility. A teacher granted a third year of eligibility shall develop a teacher's mentoring and induction

program plan in accordance with this chapter and shall undergo a comprehensive evaluation at the end of the third year. The board of educational examiners shall grant a one-year extension of the beginning teacher's provisional license upon notification by the school district that the teacher will participate in a third year of the school district's program.

2001 Acts, ch 161, §6; 2001 Acts, ch 177, §4, 15
NEW section

284.6 Teacher career development.

1. The department shall coordinate a statewide network of career development for Iowa teachers. A participating school district or career development provider that offers a career development program in accordance with section 256.9, subsection 50, shall demonstrate that the program contains the following:

a. Support that meets the career development needs of individual teachers and is aligned with the Iowa teaching standards.

b. Research-based instructional strategies aligned with the school district's student achievement needs and the long-range improvement goals established by the district.

c. Instructional improvement components including student achievement data, analysis, theory, classroom demonstration and practice, technology integration, observation, reflection, and peer coaching.

d. An evaluation component that documents the improvement in instructional practice and the effect on student learning.

2. The department shall identify models of career development practices that produce evidence of the link between teacher training and improved student learning.

3. A participating school district shall incorporate a district career development plan into the district's comprehensive school improvement plan submitted to the department in accordance with section 256.7, subsection 21. The district career development plan shall include a description of the means by which the school district will provide access to all teachers in the district to career development programs or offerings that meet the requirements of subsection 1. The plan shall align all career development with the school district's long-range student learning goals and the Iowa teaching standards. The plan shall indicate the school district's approved career development provider or providers.

4. In cooperation with the teacher's supervisor, the teacher employed by a participating school district shall develop an individual teacher career development plan. The individual plan shall be based, at minimum, on the needs of the teacher, the Iowa teaching standards, and the student achievement goals of the attendance center and the school district as outlined in the comprehensive school improvement plan. The individual

plan shall be reviewed by the teacher and the teacher's supervisor at the teacher's annual review, and shall be modified as necessary to reflect the individual teacher's and the school district's needs and the individual's progress in the plan.

5. School districts, a consortium of school districts, area education agencies, higher education institutions, and other public or private entities including professional associations may be approved by the state board to provide teacher career development. The career development program or offering shall, at minimum, meet the requirements of subsection 1. The state board shall adopt rules for the approval of career development providers and standards for the district career development plan.

2001 Acts, ch 161, §7
NEW section

284.7 Iowa teacher career path.

To promote continuous improvement in Iowa's quality teaching workforce and to give Iowa teachers the opportunity for career recognition that reflects the various roles teachers play as educational leaders, an Iowa teacher career path is established for teachers employed by participating school districts. A participating school district shall use funding allocated under section 284.13, subsection 1, paragraph "g", to raise teacher salaries to meet the requirements of this section. The Iowa teacher career path and salary minimums are as follows:

1. Effective July 1, 2001, the following career path levels are established and shall be implemented in accordance with this chapter:

a. Beginning teacher.

(1) A beginning teacher is a teacher who meets the following requirements:

(a) Has successfully completed an approved practitioner preparation program as defined in section 272.1.

(b) Holds a provisional teacher license issued by the board of educational examiners.

(c) Participates in the beginning teacher mentoring and induction program as provided in this chapter.

(2) The participating district shall increase the district's minimum salary for a first-year beginning teacher by at least one thousand five hundred dollars per year above the minimum salary paid to a first-year beginning teacher in the previous year unless the minimum salary for a first-year beginning teacher exceeds twenty-eight thousand dollars.

b. Career teacher.

(1) A career teacher is a teacher who meets the following requirements:

(a) Has successfully completed the beginning teacher mentoring and induction program and has successfully completed a comprehensive evaluation as provided in this chapter.

(b) Is reviewed by the school district as demon-

strating the competencies of a career teacher.

(c) Holds a valid license issued by the board of educational examiners.

(d) Participates in teacher career development as set forth in this chapter and demonstrates continuous improvement in teaching.

(2) The participating district shall provide a two thousand dollar difference between the average beginning teacher salary and the minimum career teacher salary, unless the school district has a minimum career teacher salary that exceeds thirty thousand dollars.

2. It is the intent of the general assembly to establish and require the implementation of and provide for the implementation of the following additional career path levels by July 1, 2003:

a. Career II teacher.

(1) A career II teacher is a teacher who meets the requirements of subsection 1, paragraph "b", has met the requirements established by the school district that employs the teacher, and is evaluated by the school district as demonstrating the competencies of a career II teacher. The teacher shall have successfully completed a comprehensive evaluation in order to be classified as a career II teacher.

(2) It is the intent of the general assembly that the participating district shall establish a minimum salary for a career II teacher that is at least five thousand dollars greater than the minimum career teacher salary. It is further intended that the district shall adopt a plan that facilitates the transition of a career teacher to a career II level.

b. Advanced teacher.

(1) An advanced teacher is a teacher who meets the following requirements:

(a) Receives the recommendation of the review panel that the teacher possesses superior teaching skills and that the teacher should be classified as an advanced teacher.

(b) Holds a valid license from the board of educational examiners.

(c) Participates in teacher career development as outlined in this chapter and demonstrates continuous improvement in teaching.

(d) Possesses the skills and qualifications to assume leadership roles.

(2) It is the intent of the general assembly that the participating district shall establish a minimum salary for an advanced teacher that is at least thirteen thousand five hundred dollars greater than the minimum career teacher salary. In conjunction with the development of the review panel pursuant to section 284.9, the department shall make recommendations to the general assembly by January 1, 2002, regarding the appropriate district-to-district recognition for advanced teachers and methods that facilitate the transition of a teacher to the advanced level.

3. A teacher shall be promoted one level at a time and a teacher promoted to the next career level shall remain at that level for at least one year

before requesting promotion to the next career level.

4. If a comprehensive evaluation for a teacher is conducted in the fifth year of the teacher's status at the career level, and indicates that the teacher's practice no longer meets the standards for that level, a comprehensive evaluation shall be conducted in the next following school year. If the comprehensive evaluation establishes that the teacher's practice fails to meet the standards for that level, the teacher shall be ineligible for any additional pay increase other than a cost-of-living increase.

5. A teacher employed in a participating district shall not receive less compensation in that participating district than the teacher received in the school year preceding participation, as set forth in section 284.4 due to implementation of this chapter. A teacher who achieves national board for professional teaching standards certification and meets the requirements of section 256.44 shall continue to receive the award as specified in section 256.44 in addition to the compensation set forth in this section.

6. *a.* For the school year beginning July 1, 2001, and ending June 30, 2002, if the licensed employees of a school district or area education agency receiving funds pursuant to section 284.13, subsection 1, paragraph "g" or "h", for purposes of this section, are organized under chapter 20 for collective bargaining purposes, the board of directors and the certified bargaining representative for the licensed employees shall mutually agree upon a formula for distributing the funds among the teachers employed by the school district or area education agency. However, the school district must comply with the salary minimums provided for in this section. The parties shall follow the negotiation and bargaining procedures specified in chapter 20 except that if the parties reach an impasse, neither impasse procedures agreed to by the parties nor sections 20.20 through 20.22 shall apply and the funds shall be paid as provided in paragraph "b". Negotiations under this section are subject to the scope of negotiations specified in section 20.9. If a board of directors and the certified bargaining representative for licensed employees have not reached mutual agreement by July 15, 2001, for the distribution of funds received pursuant to section 284.13, subsection 1, paragraph "g" or "h", paragraph "b" of this subsection shall apply.

b. If, once the minimum salary requirements of section 284.7 have been met by the school district or area education agency, and the school district or area education agency receiving funds pursuant to section 284.13, subsection 1, paragraph "g" or "h", for purposes of this section, and the certified bargaining representative for the licensed employees have not reached an agreement for distribution of the funds remaining, in accordance with paragraph "a", the board of directors shall di-

vide the funds remaining among full-time teachers employed by the district or area education agency whose regular compensation is equal to or greater than the minimum career teacher salary specified in this section. The payment amount for teachers employed on less than a full-time basis shall be prorated.

c. If the licensed employees of a school district or area education agency are not organized for collective bargaining purposes, the board of directors shall determine the method of distribution of such funds.

2001 Acts, ch 161, §8; 2001 Acts, ch 177, §5, 6, 15
NEW section

284.8 Evaluation requirements for career, career II, and advanced teachers.

1. Notwithstanding section 284.4, subsection 2, effective July 1, 2004, teacher performance shall be reviewed annually for purposes of assisting the teacher in making continuous improvement. The annual review shall be conducted by a certified evaluator who shall be selected by an administrator after consultation with the teacher. School districts are encouraged to make available time for and to utilize peer review and peer coaching techniques when conducting the annual review. The annual review need not be conducted if the teacher has been comprehensively reviewed during the same school year. The review shall include classroom observation of the teacher and should include supporting documentation from other supervisors, parents, and students.

2. In addition to evaluations agreed upon under chapter 20, a teacher shall be comprehensively evaluated based on the provisions of section 284.3 at least once every five years. Comprehensive evaluations shall be conducted by an administrator or the administrator's designee certified pursuant to section 284.10. The evaluation shall include, at minimum, classroom observation of the teacher, the teacher's progress, and implementation of the teacher's individual career development plan; should include supporting documentation from other supervisors, teachers, parents, and students; and may include video portfolios as evidence of teaching practices. A teacher may be comprehensively evaluated for purposes of performance review or recommendation for licensure, and shall be comprehensively evaluated for advancement in the career path established pursuant to section 284.7.

3. If a teacher is denied advancement based upon a comprehensive evaluation, the teacher may appeal the decision to an adjudicator under the process established under section 279.17. However, the decision of the adjudicator is final. If a district does not recommend a teacher for continued employment or licensure based upon a comprehensive evaluation, the provisions of sections 279.14, 279.17, and 279.18 shall apply. A teacher may file one cause of action objecting to the con-

tents or procedures of a comprehensive evaluation and the objections shall not be subject to the grievance procedures negotiated in accordance with chapter 20.

4. This section applies only to career, career II, and advanced teachers.

2001 Acts, ch 161, §9
NEW section

284.9 Review panel.

1. A career II teacher seeking to receive an advanced designation shall submit a portfolio of work evidence aligned with the Iowa teaching standards to a review panel established in accordance with subsection 2. A majority of the evidence in the portfolio shall be classroom-based. The review panel shall evaluate the career II teacher's portfolio to determine whether the teacher demonstrates superior teaching skills and shall make a recommendation to the board of educational examiners whether or not the teacher shall receive an advanced designation. The standards for recommendation include, but are not limited to, meeting the Iowa teaching standards at an advanced level.

2. The department shall establish up to five regional review panels consisting of five members per panel. Each panel shall include, at a minimum, a nationally board-certified teacher and a school district administrator. Panel members shall be appointed by the director and shall possess the knowledge necessary to determine the quality of the evidence submitted in an applicant's portfolio. Panel members shall serve staggered three-year terms and may be reappointed to a second term. The department shall provide support and evaluation training for panel members and convene panels as needed. Panel members shall be reimbursed for mileage expenses incurred while engaged in the performance of official duties and shall receive per diem compensation by the department.

3. To assure fairness and consistency in the evaluation process, the review panels may perform random audits of the comprehensive evaluations conducted by evaluators throughout the state, and may randomly review performance-based evaluation models developed by school districts in accordance with section 284.3, subsection 2. The review of the evaluation models shall ensure that the model is at least equivalent to the state models developed pursuant to section 256.9, subsection 50.

4. A teacher who does not receive a recommendation from a review panel may appeal that denial to an administrative law judge located in the department of inspections and appeals. The state shall not be liable for a teacher's attorney fees, costs, or damages that may result from an appeal of a review panel's decision. The state board shall adopt rules to administer this section.

2001 Acts, ch 161, §10; 2001 Acts, ch 177, §7, 15
NEW section

284.10 Evaluator training program.

1. The department shall establish an evaluator training program to improve the skills of school district evaluators in making employment decisions, making recommendations for licensure, and moving teachers through a career path as established under this chapter. The department shall consult with persons representing teachers, national board-certified teachers, administrators, school boards, higher education institutions with approved practitioner and administrator preparation programs, and with persons from the private sector knowledgeable in employment evaluation and evaluator training in order to develop standards and requirements for the program. Evaluator training programs offered pursuant to this chapter may be provided by a public or private entity. The department shall distribute a list of evaluator training program providers to each school district.

2. An administrator licensed under chapter 272 who conducts evaluations of teachers for purposes of this chapter shall complete the evaluator training program. A practitioner licensed under chapter 272 who is not an administrator may enroll in the evaluator training program. Enrollment preference shall be given to administrators. Upon successful completion, the provider shall certify that the administrator or other practitioner is qualified to conduct evaluations for employment, make recommendations for licensure, and make recommendations that a teacher is qualified to advance from one career path level to the next career path level pursuant to this chapter. Certification is for a period of five years and may be renewed.

3. Effective until July 1, 2004, a school district shall be paid, from moneys allocated pursuant to section 284.13, subsection 1, paragraph "d", the amount of one thousand dollars for each individual who is licensed as a practitioner under chapter 272 on or after July 1, 2001, and who has been certified in accordance with this section. The district shall compensate the practitioner who achieves certification not less than one thousand dollars. By October 1 annually, the school district shall notify the department of education of the number of individuals who have achieved certification in accordance with this section, and shall submit any documentation requested by the department.

4. By July 1, 2002, a higher education institution approved by the state board to provide an administrator preparation program shall incorporate the evaluator training program into the program offered by the institution.

5. Beginning July 1, 2002, the board of educational examiners shall require certification as a condition of issuing or renewing an administrator's license.

6. By July 1, 2004, the director shall develop and implement an evaluator training certification

renewal program for administrators and other practitioners who need to renew a certificate issued pursuant to this section.

2001 Acts, ch 161, §11, 25; 2001 Acts, ch 177, §8, 15

Language previously contained in subsection 2 of this section, but contingent upon enactment of HF 670 during 2001 session of 79th General Assembly, deleted due to governor's veto; see 2001 Acts, ch 161, §11, 25

NEW section

284.11 Pilot program for team-based variable pay for student achievement.

1. It is the intent of the general assembly to create a statewide team-based variable pay program to reward individual attendance centers for improvement in student achievement. A pilot program is established to give Iowa school districts with one or more participating attendance centers the opportunity to explore and demonstrate successful methods to implement team-based variable pay. The department shall develop and administer the pilot program. Each school district approved by the department to participate in the pilot program shall administer valid and reliable standardized assessments at the beginning and end of the school year to demonstrate growth in student achievement.

2. All licensed practitioners employed at a participating attendance center that has demonstrated improvement in student achievement shall share in cash awards paid from moneys received by a school district pursuant to section 284.13, subsection 1. The school district is encouraged to extend cash awards to other staff employed at the attendance center.*

3. The principal, with the participation of a team of licensed practitioners appointed by the principal, at each participating attendance center within a school district shall annually submit district attendance center student performance goals to the school board for approval. The attendance center goals must be aligned with the school improvement goals for the district developed in accordance with section 256.7, subsection 21. The district shall determine the designation of an attendance center for purposes of this section. The attendance center student performance goals may differ from attendance center to attendance center and may contain goals and indicators in addition to the comprehensive school improvement plan. An attendance center shall demonstrate student achievement through the use of multiple measures that are valid and reliable.

4. Each participating district shall create its own design for a team-based pay plan linked to the district's comprehensive school improvement plan. The plan must include attendance center student performance goals, student performance levels, multiple indicators to determine progress toward attendance center goals, and a system for providing financial rewards. The team-based pay plan shall be approved by the local board.

5. Each district team-based pay plan shall be

reviewed by the department. The department shall include a review of the locally established goals, targeted levels of improvement, assessment strategies, and financial reward system.

6. A district electing to initiate a team-based variable pay plan according to this section during the school year beginning July 1, 2001, shall notify the department of its election in writing no later than August 1, 2001. The department shall certify the school district plan by October 1, 2001.

7. The district team-based pay plan shall specify how the funding received by the district for purposes of this section is to be awarded to eligible staff in attendance centers that meet or exceed their goals. The district shall provide all attendance centers equal access to the available funds. Moneys shall be released by the department to the district only upon certification by the school board that an attendance center has met or exceeded its goals.

8. Moneys received for purposes of this section shall not be used for payment of any collective bargaining agreement or arbitrator's decision negotiated or awarded under chapter 20.

2001 Acts, ch 161, §12; 2001 Acts, ch 177, §9, 10, 15

*The amendment in 2001 Acts, ch 177, §9, does not accurately reflect the language in subsection 2 as enacted in 2001 Acts, ch 161, §12; corrective legislation is pending

NEW section

284.12 Reports — rules.

1. The department shall annually report the statewide progress on the following:

a. Student achievement scores in mathematics and reading at the fourth and eighth grade levels on a district-by-district basis as reported to the local communities pursuant to section 256.7, subsection 21, paragraph "c".

b. Evaluator training program.

c. Team-based variable pay for student achievement.

d. Changes and improvements in the evaluation of teachers under the Iowa teaching standards.

2. The report shall be made available to the chairpersons and ranking members of the senate and house committees on education, the legislative education accountability and oversight committee, the deans of the colleges of education at approved practitioner preparation institutions in this state, the state board, the governor, and school districts by January 1. School districts shall provide information as required by the department for the compilation of the report and for accounting and auditing purposes.

3. Subject to an appropriation of sufficient funds by the general assembly, the department shall provide for a comprehensive independent evaluation of all components of the student achievement and teacher quality program and shall submit the results of the evaluation in the report submitted pursuant to subsection 2 by Janu-

ary 1, 2007.

4. The board of educational examiners shall compile statistical information from the results of the examinations administered pursuant to section 272.2, subsection 16. The information compiled shall identify the practitioner preparation programs from which the applicants graduated, but shall not identify applicants individually. The statistical information compiled by the board pursuant to this subsection is a public record. The board shall submit a review of the statistical information to the chairpersons and ranking members of the senate and house committees on education and the state board by December 1, 2003.

5. In developing administrative rules for consideration by the state board, the department shall consult with persons representing teachers, administrators, school boards, approved practitioner preparation institutions, other appropriate education stakeholders, and the legislative education accountability and oversight committee.

2001 Acts, ch 161, §13; 2001 Acts, ch 177, §11, 15

NEW section

284.13 State program allocation.

1. For each fiscal year in which moneys are appropriated by the general assembly for purposes of the student achievement and teacher quality program, the moneys shall be allocated as follows in the following priority order:

a. For the fiscal year beginning July 1, 2001, and ending June 30, 2002, the department shall reserve up to one million dollars of any moneys appropriated for purposes of this chapter. For each fiscal year in which moneys are appropriated by the general assembly for purposes of team-based variable pay pursuant to section 284.11, the amount of moneys allocated to school districts shall be in the proportion that the basic enrollment of a school district bears to the sum of the basic enrollments of all participating school districts for the budget year. However, the per pupil amount distributed to a school district under the pilot program shall not exceed one hundred dollars.

b. For the fiscal year beginning July 1, 2001, and ending June 30, 2002, to the department of education, the amount of one million nine hundred thousand dollars for the issuance of national board certification awards in accordance with section 256.44.

c. For the fiscal year beginning July 1, 2001, and ending June 30, 2002, an amount up to two million four hundred thousand dollars for first-year beginning teachers, and for the fiscal year beginning July 1, 2002, and succeeding fiscal years, an amount up to four million seven hundred thousand dollars for first-year and second-year beginning teachers, to the department of education for distribution to school districts for purposes of the beginning teacher mentoring and induction programs. A school district shall receive one thou-

sand three hundred dollars per beginning teacher participating in the program. If the funds appropriated for the program are insufficient to pay mentors and school districts as provided in this paragraph, the department shall prorate the amount distributed to school districts based upon the amount appropriated. Moneys received by a school district pursuant to this paragraph shall be expended to provide each mentor with an award of five hundred dollars per semester, at a minimum, for participation in the school district's beginning teacher mentoring and induction program; to implement the plan; and to pay any applicable costs of the employer's share of contributions to federal social security and the Iowa public employees' retirement system or a pension and annuity retirement system established under chapter 294, for such amounts paid by the district.

d. For the fiscal year beginning July 1, 2001, and ending June 30, 2002, up to one million five hundred thousand dollars to the department of education for purposes of establishing the evaluator training program, including but not limited to the development of criteria models; an evaluation process; the training of providers; development of a provider approval process; training materials and costs; for payment to practitioners under section 284.10, subsection 3, and to pay any applicable costs of the employer's share of contributions to federal social security and the Iowa public employees' retirement system or a pension and annuity retirement system established under chapter 294, for such amounts paid by the district; and for subsidies to school districts for training costs. A portion of the funds allocated to the department for purposes of this paragraph may be used by the department for administrative purposes.

e. For the fiscal year beginning July 1, 2001, and ending June 30, 2002, up to one million five hundred thousand dollars to the department of education for purposes of implementing the career development program requirements of section 284.6, and the review panel requirements of section 284.9. A portion of the funds allocated to the department for purposes of this paragraph may be used by the department for administrative purposes.

f. For each fiscal year in the fiscal period beginning July 1, 2001, and ending June 30, 2003, up to five hundred thousand dollars to the board of educational examiners for the fees and costs incurred in administering the Praxis II examination in accordance with section 272.2.

g. For the fiscal year beginning July 1, 2001, and ending June 30, 2002, the amount of moneys remaining from funds appropriated for purposes of this chapter after distribution as provided in paragraphs "a" through "f" and "h" shall be allocated to school districts in accordance with the following formula:

(1) Fifty percent of the allocation shall be in the proportion that the basic enrollment of a school district bears to the sum of the basic enrollments of all school districts in the state for the budget year.

(2) Fifty percent of the allocation shall be based upon the proportion that the number of full-time equivalent teachers employed by a school district bears to the sum of the number of full-time equivalent teachers who are employed by all school districts in the state for the base year.

h. From moneys available under paragraph "g", the department shall allocate to area education agencies an amount per classroom teacher employed by an area education agency that is approximately equivalent to the average per teacher amount allocated to the districts. The average per teacher amount shall be calculated by dividing the total number of classroom teachers employed by school districts and the classroom teachers employed by area education agencies into the total amount of moneys available under paragraph "g".

2. A school district that is unable to meet the provisions of section 284.7, subsection 1, with funds allocated pursuant to subsection 1, paragraph "g", may request a waiver from the department to use funds appropriated under chapter 256D to meet the provisions of section 284.7, subsection 1, if the difference between the funds allocated to the school district pursuant to subsection 1, paragraph "g", and the amount required to comply with section 284.7, subsection 1, is not less than ten thousand dollars. The department shall consider the average class size of the school district, the school district's actual unspent balance from the preceding year, and the school district's current financial position.

3. If a school district does not choose to participate in the student achievement and teacher quality program during the school year beginning July 1, 2001, the amount of moneys to be allocated to the school district pursuant to subsection 1, paragraph "g", shall be held for the school district by the department until June 30, 2003, or until the school district participates in the program, whichever occurs earlier. Notwithstanding section 8.33, unencumbered or unobligated funds remaining on June 30, 2002, shall not revert but shall be available for expenditure for the following fiscal year for the purposes of this chapter.

4. Moneys received by a school district under this chapter are miscellaneous income for purposes of chapter 257 or are considered encumbered. A school district shall maintain a separate listing within its budget for payments received and expenditures made pursuant to this section.

2001 Acts, ch 177, §12, 15
NEW section

CHAPTER 285

STATE AID FOR TRANSPORTATION

285.12 Disputes — hearings and appeals.

In the event of a disagreement between a school patron and the board of the school district, the patron if dissatisfied with the decision of the district board, may appeal the same to the area education agency board, notifying the secretary of the district in writing within ten days of the decision of the board and by filing an affidavit of appeal with the agency board within the ten-day period. The affidavit of appeal shall include the reasons for the appeal and points at issue. The secretary of the local board on receiving notice of appeal shall certify all papers to the agency board which shall hear the appeal within ten days of the receipt of the papers and decide it within three days of the conclusion of the hearing and shall immediately notify all parties of its decision. Either party may appeal the decision of the agency board to the director of the department of education by notifying the opposite party and the agency administrator in writing within five days after receipt of notice of the decision of the agency board and by filing with the director of the department of education an affidavit

of appeal, reasons for appeal, and the facts involved in the disagreement within five days after receipt of notice of the decision of the agency board. The agency administrator shall, within ten days of said notice, file with the director all records and papers pertaining to the case, including action of the agency board. The director shall hear the appeal within fifteen days of the filing of the records in the director's office, notifying all parties and the agency administrator of the time of hearing. The director shall forthwith decide the same and notify all parties of the decision and return all papers with a copy of the decision to the agency administrator. The decision of the director shall be subject to judicial review in accordance with the terms of the Iowa administrative procedure Act.* Pending final order made by the director, upon any appeal prosecuted to such director, the order of the agency board from which the appeal is taken shall be operative and be in full force and effect.

2001 Acts, ch 159, §15

*See chapter 17A
Section amended

CHAPTER 294A

EDUCATIONAL EXCELLENCE PROGRAM — TEACHERS

294A.14 Phase III payments.

For each fiscal year, the department shall allocate the remainder of the moneys appropriated by the general assembly to the fund for phase III, subject to section 294A.18. If fifty million dollars is allocated for phase III, the payments for an approved plan for a school district shall be equal to the product of a district's certified enrollment and ninety-eight dollars and sixty-three cents, and for an area education agency shall be equal to the product of an area education agency's enrollment served and four dollars and sixty cents. If the moneys allocated for phase III are either greater than or less than fifty million dollars, the department of education shall adjust the amount for each student in certified enrollment and each student in enrollment served based upon the amount allocated for phase III.

If a school district has discontinued grades under section 282.7, subsection 1, or students attend school in another school district, under an agreement with the board of the other school district, the board of directors of the district of residence either shall transmit the phase III moneys allocated to the district for those students based upon the full-time equivalent attendance of those students

to the board of the school district of attendance of the students or shall transmit to the board of the school district of attendance of the students a portion of the phase III moneys allocated to the district of residence based upon an agreement between the board of the resident district and the board of the district of attendance.

A plan shall be developed using the procedure specified under section 294A.15. The plan shall provide for the establishment of a performance-based pay plan, a supplemental pay plan, a combination of the two pay plans, or comprehensive school transformation programs, and shall include a budget for the cost of implementing the plan. In addition to the costs of providing additional salary for teachers and the amount required to pay the employers' share of the federal social security and Iowa public employees' retirement system, or a pension and annuity retirement system established under chapter 294, and payments on the additional salary, the budget may include costs associated with providing specialized or general training. Moneys received under phase III shall not be used to employ additional employees of a school district, except that phase III moneys may be used to employ substitute teachers, part-time

teachers, and other employees needed to implement plans that provide innovative staffing patterns, or require that a teacher employed on a full-time basis be absent from the classroom for specified periods for fulfilling other instructional duties or to participate on a peer review team or in peer coaching efforts. However, all teachers employed are eligible to receive additional salary under an approved plan.

For the purpose of this section, a performance-based pay plan shall provide for salary increases for teachers who demonstrate superior performance in completing assigned duties. The plan shall include the method used to determine superior performance of a teacher. For school districts, the plan may include assessments of teaching performance, assessments of student performance, assessments of other characteristics associated with effective teaching, or a combination of these criteria.

For school districts, a performance-based pay plan may provide for additional salary for individual teachers, for teachers assigned to a specific discipline, or for all teachers assigned to an attendance center. For area education agencies, a performance-based pay plan may provide for additional salary for individual teachers, for additional salary for all teachers assigned to a specific discipline within an area education agency, or for additional salary for individual teachers assigned to a multidisciplinary team within an area education agency. If the plan provides additional salary for all teachers assigned to an attendance center, specific discipline, or multidisciplinary team, the receipt of additional salary by those teachers shall be determined on the basis of whether that attendance center, specific discipline, or multidisciplinary team meets specific objectives adopted for that attendance center, specific discipline, or multidisciplinary team. For school districts, the objectives may include, but are not limited to, decreasing the dropout rate, increasing the attendance rate, or accelerating the achievement growth of students enrolled in that attendance center through the use of learning techniques that may include, but are not limited to, reading instruction in phonics or whole language techniques.

If a performance-based pay plan provides additional salary for individual teachers:

1. The plan may provide for salary moneys in addition to the existing salary schedule of the school district or area education agency and may require the participation by the teacher in specialized training requirements.
2. The plan may provide for salary moneys by replacing the existing salary schedule or as an option to the existing salary schedule and may include specialized training requirements, general training requirements, and experience requirements.

A supplemental pay plan may provide for supplementing the costs of vocational agriculture pro-

grams as provided in section 294A.17.

For the purpose of this section, a supplemental pay plan in a school district shall provide for the payment of additional salary to teachers who participate in either additional instructional work assignments or specialized training during the regular school day or during an extended school day, school week, or school year. A supplemental pay plan in an area education agency shall provide for the payment of additional salary to teachers who participate in either additional work assignments or improvement of instruction activities with school districts during the regular school day or during an extended school day, school week, or school year.

For school districts, additional instructional work assignments may include but are not limited to general curriculum planning and development, vertical articulation of curriculum, horizontal curriculum coordination, development of educational measurement practices for the school district, participation in assessment activities leading to certification by the national board for professional teaching standards, attendance at workshops and other programs for service as cooperating teachers for student teachers, development of plans for assisting beginning teachers during their first year of teaching, attendance at summer staff development programs, development of staff development programs for other teachers to be presented during the school year, participation in family support programs, development of programs which provide instruction in conflict resolution and mediation techniques for staff and students, development of anger management instructional programs for students, and other plans locally determined in the manner specified in section 294A.15 and approved by the department of education under section 294A.16 that are of equal importance or more appropriately meet the educational needs of the school district.

For area education agencies, additional instructional work assignments may include but are not limited to providing assistance and support to school districts in general curriculum planning and development, providing assistance to school districts in vertical articulation of curriculum and horizontal curriculum coordination, development of educational measurement practices for school districts in the area education agency, development of plans for assisting beginning teachers during their first year of teaching, attendance or instruction at summer staff development programs, development of staff development programs for school district teachers to be presented during the school year, participation in family support programs, development of staff development programs which provide instruction in conflict resolution and mediation techniques, assisting school district teachers in the development of anger management instructional programs for students, and other plans determined in the manner

specified in section 294A.15 and approved by the department of education under section 294A.16 that are of equal importance or more appropriately meet the educational needs of the area education agency.

Any summer school program, for which the teacher's salary is paid or supplemented under a supplemental pay plan, shall be open to nonpublic school students in the manner provided in section 256.12.

For purposes of this section, "*comprehensive school transformation*" means activities which focus on the improvement of student achievement and the attainment of student achievement goals under section 280.12. A comprehensive school transformation plan submitted by a school district shall demonstrate the manner in which the components of the plan are integrated with a school's student achievement goals. Components of the plan may include, but are not limited to, providing salary increases to teachers who implement site-based shared decision making, building-based goal-oriented compensation mechanism, or approved innovative educational programs; who focus on student outcomes; who direct accountability for student achievement or accountability for organizational success; and who work to foster relationships between a school and businesses or public agencies which provide health and social services.

2001 Acts, ch 161, §19
Unnumbered paragraphs 3 and 4 amended

294A.25 Appropriation.

1. For the fiscal year beginning July 1, 2000, and for each succeeding year, there is appropriated from the general fund of the state to the department of education the amount of eighty million eight hundred ninety-one thousand three hundred thirty-six dollars to be used to improve teacher salaries. The moneys shall be distributed as provided in this section.

2. The amount of one hundred fifteen thousand five hundred dollars to be paid to the department of human services for distribution to its licensed classroom teachers at institutions under the control of the department of human services for payments for phase II based upon the average student yearly enrollment at each institution as determined by the department of human services.

3. The amount of ninety-four thousand six hundred dollars to be paid to the state board of regents for distribution to licensed classroom teachers at the Iowa braille and sight saving school and the Iowa school for the deaf for payments of minimum salary supplements for phase I and payments for phase II based upon the average yearly

enrollment at each school as determined by the state board of regents.

4. Commencing with the fiscal year beginning July 1, 1988, the amount of one hundred thousand dollars to be paid to the department of education for distribution to the tribal council of the Sac and Fox Indian settlement located on land held in trust by the secretary of the interior of the United States. Moneys allocated under this subsection shall be used for the purposes specified in section 256.30.

5. For the fiscal year beginning July 1, 2001, and ending June 30, 2002, the amount of fifty thousand dollars to be paid to the department of education for participation in a state and national project, the national assessment of education progress, to determine the academic achievement of Iowa students in math, reading, science, United States history, or geography.

6. For the fiscal year beginning July 1, 2001, and ending June 30, 2002, to the department of education from phase III moneys, the amount of seventy-five thousand dollars to administer the ambassador to education position in accordance with section 256.45.

7. 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.

8. Commencing with the fiscal year beginning July 1, 1997, the amount of two hundred thirty thousand dollars for a kindergarten to grade twelve management information system from additional funds transferred from phase I to phase III.

9. For the fiscal year beginning July 1, 2000, and for each succeeding fiscal year, the amount of one hundred seventy thousand dollars to the state board of regents for distribution in the amount of sixty-eight thousand dollars to the Iowa braille and sight saving school and in the amount of one hundred two thousand dollars to the Iowa state school for the deaf from phase III moneys.

10. For the fiscal year beginning July 1, 2001, and ending June 30, 2002, to the department of education from phase III moneys the amount of forty-seven thousand dollars for the Iowa mathematics and science coalition.

2001 Acts, ch 181, §21 - 24
Subsection 5 amended
Subsection 6 stricken and rewritten
Subsections 10 - 12 stricken and former subsection 13 amended and renumbered as 10

CHAPTER 295

SCHOOL IMPROVEMENT TECHNOLOGY PROGRAM

Repealed by its own terms effective July 1, 2001;
96 Acts, ch 1086, §5

CHAPTER 298

SCHOOL TAXES AND BONDS

298.18 Bond tax — election — leasing buildings.

The board of each school corporation shall, when estimating and certifying the amount of money required for general purposes, estimate and certify to the board of supervisors of the proper county for the debt service fund the amount required to pay interest due or that may become due for the fiscal year beginning July 1, thereafter upon lawful bonded indebtedness, and in addition thereto such amount as the board may deem necessary to apply on the principal.

The amount estimated and certified to apply on principal and interest for any one year shall not exceed two dollars and seventy cents per thousand dollars of the assessed valuation of the taxable property of the school corporation except as hereinafter provided.

For the sole purpose of computing the amount of bonds which may be issued as a result of the application of any limitation referred to in this section, 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 in the first annual levy of taxes to pay the bonds and interest shall not operate to further restrict the amount of bonds which may be issued, and in certifying the annual levies to the county auditor or auditors such first annual levy of taxes shall be sufficient to pay all principal of and interest on said bonds becoming due prior to the next succeeding annual levy and the full amount of such first annual levy shall be entered for collection by said auditor or auditors, as provided in chapter 76.

The amount estimated and certified to apply on principal and interest for any one year may exceed two dollars and seventy cents per thousand dollars of assessed value by the amount approved by the voters of the school corporation, but not exceeding four dollars and five cents per thousand of the assessed value of the taxable property within any school corporation, provided that the registered voters of such school corporation have first approved such increased amount at a special election, which may be held at the same time as the regular school election. The proposition submitted to the voters at such special election shall be in substantially the following form:

Shall the board of directors of the (insert name of school corporation) in the County of, State of Iowa, be authorized to levy annually a tax exceeding two dollars and seventy cents per thousand dollars, but not exceeding dollars and cents per thousand dollars of the assessed value of the taxable property within said school corporation to pay the principal of and interest on bonded indebtedness of said school corporation, it being understood that the approval of this proposition shall not limit the source of payment of the bonds and interest but shall only operate to restrict the amount of bonds which may be issued?

Notice of the election shall be given by the county commissioner of elections according to section 49.53. The election shall be held on a date not less than four nor more than twenty days after the last publication of the notice. At such election the ballot used for the submission of said proposition shall be in substantially the form for submitting special questions at general elections. The county commissioner of elections shall conduct the election pursuant to the provisions of chapters 39 to 53 and certify the results to the board of directors. Such proposition shall not be deemed carried or adopted unless the vote in favor of such proposition is equal to at least sixty percent of the total vote cast for and against said proposition at said election. Whenever such a proposition has been approved by the voters of a school corporation as hereinbefore provided, no further approval of the voters of such school corporation shall be required as a result of any subsequent change in the boundaries of such school corporation.

The voted tax levy referred to herein shall not limit the source of payment of bonds and interest but shall only restrict the amount of bonds which may be issued.

The ability of a school corporation to exceed two dollars and seventy cents per thousand dollars of assessed value to service principal and interest payments on bonded indebtedness is limited and conferred only to those school corporations engaged in the administration of elementary and secondary education.

Provided further that if a school corporation leases a building or property, which has been used

as a junior college by such corporation, to a community college, the annual amounts certified as herein provided by such leasing school corporation for payment of interest and principal due on lawful bonded indebtedness incurred by such leasing school corporation for purchasing, building, furnishing, reconstructing, repairing, improving or remodeling the building leased or acquiring or adding to the site of such property leased, to the

extent of the respective annual rent the school corporation will receive under such lease, shall not be considered as a part of the total amount estimated and certified for the purposes of determining if such amount exceeds any limitation contained in this section.

2001 Acts, ch 56, §14
Unnumbered paragraph 4 amended

CHAPTER 299

COMPULSORY EDUCATION

299.1A Compulsory attendance age.

A child who has reached the age of six and is under sixteen years of age by September 15 is of compulsory attendance age. However, if a child enrolled in a school district or accredited nonpublic

school reaches the age of sixteen on or after September 15, the child remains of compulsory age until the end of the regular school calendar.

2001 Acts, ch 110, §1
Section amended

CHAPTER 299A

PRIVATE INSTRUCTION

299A.8 Dual enrollment.

If a parent, guardian, or legal custodian of a child who is receiving competent private instruction under this chapter or a child over compulsory age who is receiving private instruction submits a request, the child shall also be registered in a public school for dual enrollment purposes. If the child is enrolled in a public school district for dual enrollment purposes, the child shall be permitted to participate in any academic activities in the district and shall also be permitted to participate on the same basis as public school children in any extracurricular activities available to children in the child's grade or group, and the parent, guardian,

or legal custodian shall not be required to pay the costs of any annual evaluation under this chapter. If the child is enrolled for dual enrollment purposes, the child shall be included in the public school's basic enrollment under section 257.6. A pupil who is participating only in extracurricular activities shall be counted under section 257.6, subsection 1, paragraph "f". A pupil enrolled in grades nine through twelve under this section shall be counted in the same manner as a shared-time pupil under section 257.6, subsection 1, paragraph "c".

2001 Acts, ch 159, §16; 2001 Acts, ch 176, §38
Section amended

CHAPTER 301

TEXTBOOKS

301.24 Petition — election.

Whenever a petition signed by eligible electors residing in the school district equal in number to at least ten percent of the registered voters in the school district, to be determined by the school board of any school district, shall be filed with the secretary thirty days or more before the regular election, asking that the question of providing free

textbooks for the use of pupils in the public schools thereof be submitted to the voters at the next regular election, the secretary shall cause notice of such proposition to be given in the notice of such election.

2001 Acts, ch 56, §15
Section amended

CHAPTER 303

DEPARTMENT OF CULTURAL AFFAIRS

303.2 Division responsibilities.

1. The administrative services section shall provide administrative, accounting, public relations and clerical services for the department, report to the director and perform other duties assigned to it by the director.

2. The historical division shall:

a. Administer and care for historical sites under the authority of the division, and maintain collections within these buildings.

Except for the state board of regents, a state agency which owns, manages, or administers a historical site must enter into an agreement with the department of cultural affairs under chapter 28E to insure the proper management, maintenance, and development of the site. For the purposes of this section, "historical site" is defined as any district, site, building, or structure listed on the national register of historic sites or identified as eligible for such status by the state historic preservation officer or that is identified according to established criteria by the state historic preservation officer as significant in national, state, and local history, architecture, engineering, archaeology, or culture.

b. Encourage and assist local county and state organizations and museums devoted to historical purposes.

c. Develop standards and criteria for the acquisition of historic properties and for the preservation, restoration, maintenance, operation, and interpretation of properties under the jurisdiction of the division. The administrator of the division shall serve as the state historic preservation officer, certified by the governor, pursuant to federal requirements.

d. Administer the state archives and records program in accordance with sections 303.12 through 303.15, and 304.6.

e. Identify and document historic properties.

f. Prepare and maintain a state register of historic places, including those listed on the national register of historic places.

g. Conduct historic preservation activities pursuant to federal and state requirements.

h. Publish matters of historical value to the public, and pursue historical, architectural, and archaeological research and development which may include but are not limited to continuing surveys, excavation, scientific recording, interpretation, and publication of the historical, architectural, archaeological, and cultural sites, buildings, and structures in the state.

i. Buy or receive by other means historical materials including, but not limited to, artifacts, art, books, manuscripts, and images. Such materials

are not personal property under section 18.12 and shall be received and cared for under the rules of the department. The historical division may sell or otherwise dispose of those materials according to the rules of the department and be credited for any revenues credited by the disposal less the costs incurred.

j. Administer the historical resource development program established in section 303.16.

k. Administer, preserve, and interpret the battle flag collection assembled by the state in consultation and coordination with the department* of veterans affairs and the department of general services. A portion of the battle flag collection shall be on display at the state capitol and the state historical building at all times, unless on loan approved by the department of cultural affairs.

3. The arts division shall:

a. Make surveys as deemed advisable of existing artistic and cultural programs and activities within the state, including but not limited to music, theatre, dance, painting, sculpture, architecture, and allied arts and crafts.

b. Administer the program of agreements for indemnification by the state in the event of loss of or damage to special exhibit items established by sections 304A.21 through 304A.30.

c. Submit a report to the governor and to the general assembly not later than ten calendar days following the commencement of each first session of the general assembly concerning the studies undertaken during the biennium and recommending legislation and other action as necessary for the implementation and enforcement of this subsection and subchapter VI of this chapter.

2001 Acts, ch 86, §1

**"Commission" probably intended; corrective legislation is pending

Subsection 2, NEW paragraph k

303.9A Iowa heritage fund.

1. An Iowa heritage fund is created in the state treasury to be administered by the state historical society board of trustees. The fund shall consist of all moneys allocated to the fund by the treasurer of state.

2. Moneys in the fund shall be used in accordance with the following:

a. Ninety percent shall be retained by the state historical society and used to maintain and expand Iowa's history curriculum, to provide teacher training in Iowa history, and to support museum exhibits, historic sites, and adult education programs.

b. Five percent shall be retained by the state historical society to be used for start-up costs for the one hundred seventy-fifth and two hundredth

anniversaries of Iowa statehood.

c. Five percent shall be retained by the state historical society to be used for the promotion of the sale of the Iowa heritage registration plate issued under section 321.34.

2001 Acts, ch 144, §1
Subsection 2, paragraph a amended

303.21 Petition.

Not less than ten percent of the eligible voters in an area of asserted historical significance may petition the department for a referendum for the establishment of a district.

The petition shall contain a description of the property suggested for inclusion in the district and the reasons justifying the creation of the district.

2001 Acts, ch 24, §45
Unnumbered paragraph 2 amended

303.42 Petition.

Eligible electors residing within the limits of a proposed land use district equal in number to at least ten percent or more of the registered voters residing within the limits of a proposed land use district may file a petition in the office of the county auditor of the county in which the proposed land use district, or its major portion, is located, requesting that there be submitted to the registered voters of the proposed district the question of whether the territory within the boundaries of the proposed district shall be organized as a land use district under this subchapter. The petition shall be addressed to the board of supervisors of the county where it is filed and shall set forth the following:

1. An intelligible description of the boundaries of the territory to be embraced in the district.
2. The name of the proposed district.
3. That the territory to be embraced in the district has a distinctive historical and cultural character which might be preserved by the establishment of the district.
4. That the public welfare will be promoted by the establishment of the district.
5. The signatures of the petitioners.

2001 Acts, ch 56, §16
Unnumbered paragraph 1 amended

303.45 Hearing of petition and order.

The board of supervisors to whom the petition is addressed shall preside at the hearing provided for in section 303.44 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 it. Proof of the residence and qualification of the petitioners as eligible electors shall be made by affidavit or otherwise as the board may direct. The board shall consider the boundaries of the proposed land use 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 boundaries of a proposed district shall not be changed to include property not included in the original petition and published notice until the owner of that property is given notice 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 them. The board of supervisors, after hearing the statements, evidence, and suggestions made and offered at the hearing, shall enter an order fixing the boundaries of the proposed district and directing that an election be held for the purpose of submitting to the registered voters residing within the boundaries of the proposed district the question of organization and establishment of the proposed land use 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, establish voting precincts within the proposed district and define their boundaries, and specify the polling places which in the board's judgment will best serve the convenience of the voters, and shall appoint from residents of the proposed district three judges and two clerks of election for each voting precinct established.

2001 Acts, ch 56, §17
Section amended

303.47 Election.

Each registered voter residing within the proposed district may 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:

For Land Use District
Against Land Use District

The election shall be conducted in the manner provided by law for general elections and the ballots so cast shall be issued, received, returned, and canvassed in the same manner and by the same officers, in the county whose board of supervisors is vested with jurisdiction of the proceedings, as provided by law in the case of ballots cast for county officers, except as modified by this subchapter. The board of supervisors shall cause a statement of the result of the election to be spread upon the records of the county auditor. If a majority of the votes cast upon the question of incorporation of the proposed district is in favor of the proposed district, the proposed district becomes an organized district under this subchapter.

2001 Acts, ch 56, §18
Section amended

303.52A Inclusion or exclusion of land.

If at least sixty percent of the registered voters of a land area petition the board of supervisors for inclusion in or exclusion from a land use district,

the board shall review the petition and determine if the petition contains a sufficient number of registered voters residing in the affected land area and, if the petition is sufficient, submit it to the board of trustees of the land use district. The land area to be included in or excluded from the land use district must be contiguous to the land use dis-

trict. If two thirds of the membership of the board of trustees vote in favor of the petition, the petition shall be granted and the land area included in or excluded from the district.

2001 Acts, ch 56, §19
Section amended

CHAPTER 304

STATE FORMS AND RECORDS

304.13A Electronic records.

1. An agency which produces or makes available for public inspection written reports or newsletters on and after July 1, 2001, shall maintain such report or newsletter in an electronic form, giving consideration to the standards for electronic records recommended by the information technology department. Such agency, by itself, or with the assistance of the information technology department, shall also make the report or newsletter accessible to the public through the internet as provided in subsection 2 and through other electronic means.

2. A copy of all agency reports or newsletters maintained pursuant to subsection 1 shall be located at an internet site maintained by the information technology department in consultation with the state librarian, and all such reports or newsletters shall be placed on electronic media. The state librarian shall provide for the distribution of such copies to a public library in this state requesting such copy.

For purposes of this section, “public library” means a city library, a library service area as pro-

vided in chapter 256, or a library district as provided in chapter 336.

3. It is the intent of the general assembly that this section be interpreted to reduce, to the greatest extent possible, printed copies of agency reports while protecting the public’s right to have access to such reports. It is the intent of the general assembly that the distribution of a printed mandatory report be used only when it is the most efficient and cost-effective method for providing public access to such report. It is the intent of the general assembly that agency reports subject to this section be made available, to the greatest extent possible, to the public by electronic means.

4. The commission, in consultation with the information technology department, shall make recommendations to the governor and the general assembly for the continued reduction of printed reports throughout state government in a manner that protects the public’s right to access such reports.

2001 Acts, ch 158, §25; 2001 Acts, ch 189, §11
Subsections 1 and 2 amended

CHAPTER 306

ESTABLISHMENT, ALTERATION, AND VACATION OF HIGHWAYS

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 pur-

chases 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. In computing the 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 twenty dollars for every lineal foot of additional length of driveway located on the owner’s property. This

payment shall represent just compensation to the 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. 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.

4. 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 that is contiguous to existing road right-of-way for the maintenance, safety improvement, or upgrade of the existing secondary road, 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 pro-

posed 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 a utility facility, the agency shall have the authority to institute and maintain proceedings on behalf of the owner of the utility facility for the condemnation of replacement property rights. The replacement property rights shall be equal in substance to the existing rights of the owner of the utility facility, except that the replacement property rights shall be for a width and location deemed appropriate and necessary for the needs of the owner of the utility facility, as determined by the agency and the owner of the facility. The replacement property rights of the owner of the utility facility shall be subordinate to the rights of the agency only to the extent necessary for the construction and maintenance of the designated road. Within a reasonable time after completion of the relocation, all previously owned property rights of the owner of the utility facility no longer required for operation and maintenance of the utility facility 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 owner of the utility facility. For purposes of this subsection, "utility facility" means an electric, gas, water, steam power, or materials transmission or distribution system; a transportation system; a communications system, including cable television; and fixtures, equipment, or other property associated with the operation, maintenance, or repair of the system. A utility facility may be publicly, privately, or cooperatively owned.

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.

2001 Acts, ch 32, §1
Subsection 2, paragraph a amended

CHAPTER 306C

JUNKYARD BEAUTIFICATION AND BILLBOARD CONTROL

306C.10 Definitions.

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

1. “*Adjacent area*” means an area which is contiguous to and within six hundred sixty feet of the nearest edge of the right of way of any interstate, freeway primary, or primary highway.

2. “*Advertising device*” includes any outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, or any other device designed, intended, or used to advertise or give information in the nature of advertising, and having the capacity of being visible from the traveled portion of any interstate or primary highway.

3. “*Bonus interstate highways*” includes all interstate highways except those interstate highways adjacent to areas excepted from control under chapter 306B by authority of section 306B.2, subsection 4.

4. “*Commercial or industrial activities*” means those activities generally recognized as commercial or industrial by zoning authorities in this state, except that none of the following activities shall be considered commercial or industrial:

- a. Outdoor advertising structures.
- b. Agricultural, forestry, grazing, farming, and related activities, including, but not limited to, wayside fresh produce.
- c. Activities in operation less than three months per year.
- d. Activities conducted in a building principally used as a residence.
- e. Railroad tracks and minor spurs.
- f. Activities outside of adjacent areas, as defined by this division and section 306B.5.
- g. Activities which have been used in defining and delineating an unzoned area but which have since been discontinued or abandoned.
- h. Residential housing developments.
- i. Manufactured home communities or mobile home parks.
- j. Institutions of learning.
- k. State, county and charitable institutions.
- l. State and county conservation and recreation areas, public parks, forests, playgrounds, or other areas of historic interest or areas designated as scenic beautification areas under section 313.67.

5. “*Commercial or industrial zone*” means those areas zoned commercial or industrial under authority of a law, regulation, or ordinance of this state, its subdivisions, or a municipality.

6. “*Department*” means the state department of transportation.

7. “*Erect*” means to construct, reconstruct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being

or establish; however, it shall not include any of the foregoing activities when performed incidental to the customary maintenance of an advertising device.

8. “*Freeway primary highway*” means those primary highways which have been constructed as a fully controlled access facility with no access to the facility except at established interchanges.

9. “*Information center*” means a site, either with or without structures or buildings, established and maintained at a rest area for the purpose of providing “information of specific interest to the traveling public”, as that phrase is defined in section 306C.11, subsection 5.

10. “*Interstate highway*” includes “*interstate road*” and “*interstate system*” and means any highway of the primary system at any time officially designated as a part of the national system of interstate and defense highways by the department and approved by the appropriate authority of the federal government.

11. “*Maintain*” means to cause to remain in a state of good repair but does not include reconstruction.

12. “*Main-traveled way*” means the portion of the roadway for movement of vehicles on which through traffic is carried exclusive of shoulders and auxiliary lanes. In the case of a divided highway, the main-traveled way includes each of the separated roadways for traffic in opposite directions, exclusive of frontage roads, turning roadways, or parking areas.

13. “*Political sign*” means an outdoor sign of a temporary nature, not larger than thirty-two square feet in surface area, erected for the purpose of soliciting votes or support for or in opposition to any candidate or any political party under whose designation any candidate is seeking nomination or election or any public question on the ballot in an election held under the laws of this state.

14. “*Primary highways*” includes the entire primary system as officially designated, or as may hereafter be so designated, by the department.

15. “*Reconstruction*” means any repair to the extent of sixty percent or more of the replacement cost of the structure, excluding buildings.

16. “*Rest area*” means an area or site established and maintained under authority of section 313.67 within the right of way of an interstate, freeway primary, or primary highway under supervision and control of the department for the safety, recreation, and convenience of the traveling public.

17. “*Right of way*” means land area dedicated to public use for the highway and its maintenance, and includes land acquired in fee simple or by permanent easement for highway purposes, but does

not include temporary easements or rights for supplementary highway appurtenances.

18. “*Special event sign*” means a temporary advertising device, not larger than thirty-two square feet in area, erected for the purpose of notifying the public of noncommercial community events including but not limited to fairs, centennials, festivals, and celebrations open to the general public and sponsored or approved by a city, county, or school district.

19. “*Structure*” means any sign supporting device including but not limited to buildings.

20. “*Unzoned commercial or industrial area*” means those areas not zoned by state or local law, regulation, or ordinance, which are occupied by one or more commercial or industrial activities, and the land along the interstate highways and

primary highways for a distance of seven hundred fifty feet immediately adjacent to the activities. All measurements shall be from the outer edge of the regularly used buildings, parking lots, storage, or processing areas of the activities and shall be parallel to the edge of pavement of the highway. Measurements shall not be from the property line of the activities unless that property line coincides with the limits of the activities. Unzoned commercial or industrial areas shall not include land on the opposite side of the highway from the commercial or industrial activities.

21. “*Visible*” means capable of being read or comprehended without visual aid by a person of normal visual acuity.

2001 Acts, ch 153, §16
Terminology change applied

CHAPTER 307

DEPARTMENT OF TRANSPORTATION (DOT)

307.15 through 307.19 Repealed by 86 Acts, ch 1245, § 1969.

307.20 Biodiesel fuel revolving fund.

1. A biodiesel fuel revolving fund is created in the state treasury. The biodiesel fuel revolving fund shall be administered by the department and shall consist of moneys received from the sale of EAct credits banked by the department on April 19, 2001, moneys appropriated by the general assembly, and any other moneys obtained or accepted by the department for deposit in the fund. Moneys in the fund are appropriated to and shall be used by the department for the purchase of biodiesel fuel for use in department vehicles. The department shall submit an annual report not later than January 31 to the members of the general assembly and the legislative fiscal bureau, of the expenditures made from the fund during the preceding fiscal year. Section 8.33 does not apply to any

moneys in the fund and, notwithstanding section 12C.7, subsection 2, earnings or interest on moneys deposited in the fund shall be credited to the fund.

2. A department motor vehicle operating on biodiesel fuel shall be affixed with a brightly visible sticker that notifies the traveling public that the motor vehicle uses biodiesel fuel.

3. For purposes of this section the following definitions apply:

a. “*Biodiesel fuel*” means soydiesel fuel as defined in section 159A.2.

b. “*EAct credit*” means a credit issued pursuant to the federal Energy Policy Act (EAct), 42 U.S.C. § 13201 et seq.

2001 Acts, ch 52, §1, 3
NEW section

307.31 Repair of out-of-state commercial motor vehicles — permits. Repealed by 2001 Acts, ch 132, § 23. See § 321.56.

CHAPTER 309

SECONDARY ROADS

309.35 When surveys required.

Before proceeding to the construction of any road or roads included in the secondary road construction program where the grading, exclusive of bridges and culverts, is estimated to cost over ten thousand dollars per mile, the county engineer shall cause detailed surveys and plans for the road or roads to be prepared.

2001 Acts, ch 32, §2
Section amended

309.40A Emergency highway and bridge projects.

Notwithstanding section 309.40, a county may contract for the emergency repair, restoration, or reconstruction of a highway or bridge under the county’s jurisdiction without advertising for bids if all of the following conditions are met:

1. The emergency was caused by an unforeseen event causing the failure of a highway,

bridge, or other highway structure so that the highway is unserviceable, or where immediate action is necessary to prevent further damage or loss.

2. The county solicits written bids from three or more contractors engaged in the type of work needed.

3. The necessary work can be done for less than one hundred thousand dollars.

4. If possible, the county notifies the appropriate Iowa highway contractors' associations of the proposed work.

2001 Acts, ch 32, §3
NEW section

309.93 Itemized statement.

On or before April 15 of each year, the board of supervisors, with the assistance of the county engineer, shall adopt and submit to the department for approval the county secondary road budget for the next fiscal year. The budget shall include an itemized statement of:

1. Estimated revenues to be raised by property taxation for secondary road purposes.

2. Estimated revenues to be received from the state road use tax fund.

3. Estimated revenues from all other sources for secondary road purposes.

4. The proposed expenditures from the road fund during the next fiscal year. The estimates of proposed expenditures shall be itemized and classified in a manner prescribed by the department.

5. The actual expenditures for the preceding two fiscal years and the estimated expenditures for the current fiscal year. These shall be itemized and classified in the same manner as proposed expenditures.

6. The cash balance of the road fund at the end of the preceding fiscal year, an estimate of the cash balance at the end of the current fiscal year, and an estimate of the cash balance at the end of the next fiscal year.

For future amendments to this section effective July 1, 2002, see 2001 Acts, ch 32, §4, 14

Section not amended; footnote added

CHAPTER 312

ROAD USE TAX FUND

312.2 Allocations from fund.

The treasurer of the state shall, on the first day of each month, credit all road use tax funds which have been received by the treasurer, to the primary road fund, the secondary road fund of the counties, the farm-to-market road fund, and the street construction fund of cities in the following manner and amounts:

1. To the primary road fund, forty-seven and one-half percent.

2. To the secondary road fund of the counties, twenty-four and one-half percent.

3. To the farm-to-market road fund, eight percent.

4. To the street construction fund of the cities, twenty percent.

5. The treasurer of state shall before making the above allotments credit annually to the highway grade crossing safety fund the sum of seven hundred thousand dollars, credit annually from the road use tax fund the sum of nine hundred thousand dollars to the highway railroad grade crossing surface repair fund, credit monthly to the primary road fund the dollars yielded from an allotment of sixty-five hundredths of one percent of all road use tax funds for the express purpose of carrying out subsection 11 of section 307A.2, section 313.4, subsection 2, and section 307.45, and credit annually to the primary road fund the sum of five hundred thousand dollars to be used for paying expenses incurred by the state department of transportation other than expenses incurred for

extensions of primary roads in cities. All unobligated funds provided by this subsection, except those funds credited to the highway grade crossing safety fund, shall at the end of each year revert to the road use tax fund. Funds in the highway grade crossing safety fund shall not revert to the road use tax fund except to the extent they exceed five hundred thousand dollars at the end of any biennium. The cost of each highway railroad grade crossing repair project shall be allocated in the following manner:

a. Twenty percent of the project cost shall be paid by the railroad company.

b. Twenty percent of the project cost shall be paid by the highway authority having jurisdiction of the road crossing the railroad.

c. Sixty percent of the project cost shall be paid from the highway railroad grade crossing surface repair fund.

6. The treasurer of state shall before making the allotments provided for in this section credit monthly to the state department of transportation funds sufficient in amount to pay the costs of purchasing certificate of title and registration forms, and supplies and materials and for the cost of prison labor used in manufacturing motor vehicle registration plates, decalcomania emblems, and validation stickers at the prison industries.

7. The treasurer of state, before making the allotments provided in this section, shall credit annually to the primary road fund from the road use tax fund the sum of seven million one hundred

thousand dollars.

8. The treasurer of state, before making any allotments to counties under this section, shall reduce the allotment to a county for the secondary road fund by the amount by which the total funds that the county transferred or provided during the prior fiscal year under section 331.429, subsection 1, paragraphs "a", "b", "d", and "e", are less than seventy-five percent of the sum of the following:

a. From the general fund of the county, the dollar equivalent of a tax of sixteen and seven-eighths cents per thousand dollars of assessed value on all taxable property in the county.

b. From the rural services fund of the county, the dollar equivalent of a tax of three dollars and three-eighths of a cent per thousand dollars of assessed value on all taxable property not located within the corporate limits of a city in the county.

Funds remaining in the secondary road fund of the counties due to a reduction of allocations to counties for failure to maintain a minimum local tax effort shall be reallocated to counties that are not reduced under this subsection pursuant to the allocation provisions of section 312.3, subsection 1, based upon the needs and area of the county. Information necessary to make allocations under this subsection shall be provided by the state department of transportation or the director of the department of management upon request by the treasurer of state.

9. The treasurer of state, before making the allotments provided for in this section, shall credit annually to the living roadway trust fund created under section 314.21 one hundred fifty thousand dollars from the road use tax fund.

10. The treasurer of state, before making the other allotments provided for in this section, shall credit annually to the primary road fund from the road use tax fund the sum of four million four hundred thousand dollars and to the farm-to-market road fund from the road use tax fund the sum of one million five hundred thousand dollars for partial compensation of allowing trucks to operate on the roads of this state as provided in section 321.463.

11. The treasurer of state, before making the allotments provided for in this section, shall credit annually to the living roadway trust fund created under section 314.21 one hundred thousand dollars from the road use tax fund.

12. The treasurer of state, before making the allotments provided for in this section, shall credit monthly from the road use tax fund to the revitalize Iowa's sound economy fund, created under section 315.2, the revenue accruing to the road use tax fund in the amount equal to the revenues collected under each of the following:

a. From the excise tax on motor fuel and special fuel imposed under the tax rate of section 452A.3 except aviation gasoline, the amount of excise tax collected from one and eleven-twentieths cents per gallon.

b. From the excise tax on special fuel for diesel engines, the amount of excise tax collected from one and eleven-twentieths cents per gallon.

13. The treasurer of state, before making the allotments provided for in this section, shall credit monthly from the road use tax fund to the secondary road fund the revenue accruing to the road use tax fund in the amount equal to the revenues collected under each of the following:

a. From the excise tax on motor fuel and special fuel imposed under the tax rate of section 452A.3, except aviation gasoline, the amount of excise tax collected from nine-twentieths cent per gallon.

b. From the excise tax on special fuel for diesel engines, the amount of excise tax collected from nine-twentieths cent per gallon.

14. The treasurer of state, before making the allotments provided for in this section, shall credit monthly from the road use tax fund to the general fund of the state from revenue credited to the road use tax fund under section 423.24, subsection 1, paragraph "b", an amount equal to one-twentieth of eighty percent of the revenue from the operation of section 423.7.

There is appropriated from the general fund of the state for each fiscal year to the state department of transportation the amount of revenues credited to the general fund of the state during the fiscal year under this subsection to be used for purposes of public transit assistance under chapter 324A.

15. The treasurer of state, before making the allotments provided for in this section, shall credit monthly from the road use tax fund to the state department of transportation for county, city and state traffic safety improvement projects an amount equal to one-half of one percent of moneys credited to the road use tax fund.

16. The treasurer of state, before making the allotments provided for in this section, shall credit monthly from the road use tax fund to the motorcycle rider education fund established in section 321.180B, an amount equal to one dollar per year of license validity for each issued or renewed driver's license which is valid for the operation of a motorcycle. Moneys credited to the motorcycle rider education fund under this subsection shall be taken from moneys credited to the road use tax fund under section 423.24.

17. a. The treasurer of state, before making the allotments provided for in this section, for the fiscal year beginning July 1, 1990, and each succeeding fiscal year, shall credit from the road use tax fund two million dollars to the county bridge construction fund, which is hereby created. Moneys credited to the county bridge construction fund shall be allocated to counties by the department for bridge construction, reconstruction, replacement, or realignment based on needs in accordance with rules adopted by the department.

b. The treasurer of state, before making the al-

lotments provided for in this section, for the fiscal year beginning July 1, 1990, and each succeeding fiscal year, shall credit from the road use tax fund five hundred thousand dollars to the city bridge construction fund, which is hereby created. Moneys credited to the city bridge construction fund shall be allocated to cities by the department for bridge construction and reconstruction based on needs in accordance with rules adopted by the department.

18. The treasurer of state, before making the allotments provided for in this section, shall credit annually from the road use tax fund to the state department of transportation the sum of six hundred fifty thousand dollars for the purpose of providing county treasurers with automation and telecommunications equipment and support for vehicle registration and titling and driver licens-

ing. Notwithstanding section 8.33, unobligated funds credited under this subsection remaining on June 30 of the fiscal year shall not revert but shall remain available for expenditure for purposes of this subsection in subsequent fiscal years.

2001 Acts, ch 180, §5
Subsection 18 amended

312.14 Cities to submit report.

Cities in the state which receive allotments of funds from road use tax funds shall prepare and deliver on or before September 30 each year to the department an annual report showing all street receipts and expenditures for the city for the previous fiscal year.

For future amendments to this section effective July 1, 2002, see 2001 Acts, ch 32, §5, 14
Section not amended; footnote added

CHAPTER 313

PRIMARY ROADS

313.10 Bids — advertising.

As soon as the approved plans and specifications for any primary road construction project are filed with the department, the department shall, if the estimated cost exceeds one thousand dollars, proceed to advertise for bids for the construction of the improvement.

The department may contract for the emergency repair, restoration, or reconstruction of a highway or bridge without advertising for bids if all of the following conditions are met:

1. The emergency was caused by an unforeseen event causing the failure of a highway, bridge, or other highway structure so that the

highway is unserviceable, or where immediate action is necessary to prevent further damage or loss.

2. The department solicits written bids from three or more contractors engaged in the type of work needed.

3. The necessary work can be done for less than five hundred thousand dollars.

4. If possible, the department notifies the appropriate Iowa highway contractors' associations of the proposed work.

2001 Acts, ch 32, §6
Section amended

CHAPTER 314

ADMINISTRATIVE PROVISIONS FOR HIGHWAYS

314.1 Bidders' statements of qualifications — basis for awarding contracts.

The agency having charge of the receipt of bids and the award of contracts for the construction, reconstruction, improvement, or repair or maintenance of a highway, bridge, or culvert may require, for any highway, bridge, or culvert contract letting, that each bidder file with the agency a statement showing the bidder's financial standing, equipment, and experience in the execution of like or similar work. The statements shall be on standard forms prepared by the department and shall be filed with the agency prior to the letting at which the bidder expects to bid. The agency may, in advance of the letting, notify the bidder as to the

amount and the nature of the work for which the bidder is deemed qualified to bid. A bidder who is prequalified under this subsection by the department shall be deemed qualified for a highway, bridge, or culvert contract letting by any other agency and shall submit proof of the prequalification in a manner determined by the department if required to do so by the agency.

In the award of contracts for the construction, reconstruction, improvement, repair or maintenance of any highway, the agency having charge of awarding such contracts shall give due consideration not only to the prices bid but also to the mechanical or other equipment and the financial responsibility and experience in the performance of

like or similar contracts. The agency may reject any or all bids, or may let by private contract or build by day labor, at a cost not in excess of the lowest bid received. Upon the completion of any contract or project on either the farm-to-market or secondary road system, the county engineer shall file with the county auditor a statement showing the total cost thereof with certificate that said work has been done in accordance with the plans and specifications. All contracts shall be in writing and shall be secured by a bond for the faithful performance thereof as provided by law.

2001 Acts, ch 32, §7, 14
For future amendments to this section effective July 1, 2002, see 2001 Acts, ch 32, §7, 14
Unnumbered paragraph 1 amended

314.1A Detailed cost accountings by cities and counties — rules.

The department shall adopt rules prescribing the manner by which cities and counties shall provide a detailed cost accounting under section 309.93 or 312.14,* of all instances of the use of day labor or public or private contracts for construction, reconstruction, or improvement projects on highways within their jurisdiction. The rules shall include definitions concerning types of projects and uniform requirements and definitions that cities and counties shall use in determining costs for such projects. The department shall establish an advisory committee composed of representatives of public sector agencies, private sector contractor organizations, and certified public employee collective bargaining organizations to make recommendations for such rules.

2001 Acts, ch 32, §8
*Amendments to §309.93 and 312.14 regarding detailed cost accounting are effective July 1, 2002; 2001 Acts, ch 32, §4, 5, 14
NEW section

314.1B Reserved.

For future text of this section effective July 1, 2002, see 2001 Acts, ch 32, §9, 14

314.13 Definitions.

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

1. “Agency” means any governmental body which exercises jurisdiction over any road as pro-

vided by law.

2. “Committee” means the integrated roadside vegetation management technical advisory committee created in section 314.22.

3. “Coordinator” means the integrated roadside vegetation management coordinator.

4. “Department” means the state department of transportation.

5. “Highway” or “street” 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.

2001 Acts, ch 32, §10
NEW subsection 5

314.28 Keep Iowa beautiful fund.

A keep Iowa beautiful fund is created in the office of the treasurer of state. The fund is composed of moneys appropriated or available to and obtained or accepted by the treasurer of state for deposit in the fund. The fund shall include moneys credited to the fund as provided in section 422.12A. All interest earned on moneys in the fund shall be credited to and remain in the fund. Section 8.33 does not apply to moneys in the fund.

Moneys in the fund are subject to appropriation by the general assembly annually for the purposes of educating and encouraging Iowans to take greater responsibility for improving their community environment and enhancing the beauty of the state through litter prevention, improving waste management and recycling efforts, and beautification projects.

The department may authorize payment of moneys appropriated from the fund to the department upon approval of an application from a private or public organization. The applicant shall submit a plan for litter prevention, improving waste management and recycling efforts, or a beautification project along with its application. The department shall establish standards relating to the type of projects available for assistance.

2001 Acts, ch 160, §1
Section 422.12A, providing income tax checkoff revenue source for the fund, and this section apply retroactively to January 1, 2001, for tax years beginning on or after that date; 2001 Acts, ch 160, §3
NEW section

CHAPTER 315

REVITALIZE IOWA'S SOUND ECONOMY FUND

315.3 Use of fund.

1. The fund is appropriated for and shall be used in the establishment, construction, improvement and maintenance of roads and streets which promote economic development in the state by having any of the following effects:

a. Improving or maintaining highway access

to specific development sites, including existing and future industrial locations.

b. Improving or maintaining highway access between urban centers or between urban centers and the interstate road system as defined in section 306.3.

c. Improving or maintaining highway access

to economically depressed areas of the state.

d. Improving or maintaining highway access to points of shipment or processing of products.

e. Improving or maintaining highway access to trucking terminals and places of embarkation or shipment by other transportation modes.

f. Improving or maintaining highway access to scenic, recreational, historic and cultural sites or other locations identified as tourist attractions.

2. The fund is also appropriated and shall be used for the reimbursement or payment to cities or counties of all or part of the interest and principal on general obligation bonds issued by cities or counties for the purpose of financing approved road and street projects meeting the requirements of subsection 1.

3. *a.* If the state transportation commission receives and files a letter from the director of transportation certifying that federal funding is not forthcoming due to the failure of the United States Congress to pass and the president of the United States to approve legislation providing long-term federal transportation funding to the state of Iowa, the commission may authorize the temporary transfer of funds from the RISE fund to the primary road fund. Transferred funds shall be repaid to the RISE fund within three months of transfer.

b. If the state transportation commission receives and files a letter from the director of transportation certifying that the cash flow funding of the department may be inadequate to meet anticipated road construction costs, the commission may authorize the temporary transfer of funds from the RISE fund to the primary road fund. Funds transferred under this paragraph shall be repaid to the RISE fund within six months of transfer.

c. The commission shall manage the RISE fund to ensure that funds will be available to meet contract obligations on approved RISE projects.

2001 Acts, ch 180, §6
Subsection 3 amended

315.11 Additional factors and requirements.

In addition to other effects and factors to be considered under section 315.5, for applications submitted after July 1, 1988, the following factors and requirements shall be considered or applied:

1. The impact of the proposed project on other businesses in competition with the business being considered for assistance. The department shall make a good faith effort to identify existing Iowa

businesses within an industry in competition with the business being considered for assistance. The department shall make a good faith effort to determine the probability that the proposed financial assistance will displace employees of the existing businesses. In determining the impact on businesses in competition with the business being considered for assistance, jobs created as a result of other jobs being displaced elsewhere in the state shall not be considered direct jobs created.

2. The economic impact to the state of the proposed project. In measuring the economic impact the department shall award more points for the following:

a. A project which has a greater consistency with the state strategic plan.*

b. A business with a greater percentage of sales out-of-state or of import substitution.

c. A business with a higher proportion of in-state suppliers.

d. A project which would provide greater diversification of the state economy.

e. A business with fewer in-state competitors.

f. A potential for future job growth.

g. A project which is not a retail operation.

3. The quality of jobs to be provided. Jobs that have a higher wage scale, have a lower turnover rate, are full-time, or are career-type positions are considered higher in quality. Businesses that have wage scales substantially below that of existing Iowa businesses in that area should be rated as providing the lowest quality of jobs and should therefore be given the lowest ranking for providing such assistance.

4. If the business has a record of violations of the law over a period of time that tends to show a consistent pattern, the business shall be given the lowest ranking for providing assistance. The department shall make a good faith effort to compile this information.

5. If a business has, within three years of application for assistance, acquired or merged with an Iowa corporation or company, the business shall make a good faith effort to hire the workers of the merged or acquired company.

6. To be eligible for assistance a business shall provide for a preference for hiring residents of the state or the economic development area, except for out-of-state employees offered a transfer to Iowa or the economic development area.

7. All known required environmental permits must be granted and regulations met before moneys are released.

*See §15.104(1)

Section not amended; footnote revised

CHAPTER 317

WEEDS

317.25 Teasel, multiflora rose, and purple loosestrife prohibited — exceptions.

A person shall not import, sell, offer for sale, or distribute teasel (*Dipsacus*) biennial, the multiflora rose (*rosa multiflora*), purple loosestrife (*lythrum salicaria*), purple loosestrife (*lythrum virgatum*), or seeds of them in any form in this state. However, this section does not prohibit the sale, of-

fer for sale, or distribution of the multiflora rose (*rosa multiflora*) used for understock for either cultivated roses or ornamental shrubs in gardens. Any person violating the provisions of this section is subject to a fine of not exceeding one hundred dollars.

2001 Acts, ch 91, §1
Section amended

CHAPTER 320

USE OF HIGHWAYS FOR SIDEWALKS,
SERVICE MAINS OR CATTLEWAYS**320.5 Term of grant.**

A grant made under section 320.4 shall be on such reasonable conditions as the state department of transportation or the board of supervisors

may exact, and on such conditions as the general assembly may prescribe.

2001 Acts, ch 32, §11
Section amended

CHAPTER 321

MOTOR VEHICLES AND LAW OF THE ROAD

Fines doubled for moving traffic violations occurring in road work zones; §805.8A, subsection 14, paragraph i

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. “*Agricultural hazardous material*” means a hazardous material, other than hazardous waste, whose end use directly supports the production of an agricultural commodity, including, but not limited to, a fertilizer, pesticide, soil conditioner, or fuel. “*Agricultural hazardous material*” is limited to material in class 3, 8, or 9, division 2.1, 2.2, 5.1, or 6.1, or an ORM-D material as defined in 49 C.F.R. § 171.8.

1A. “*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 recreational use but

not including farm tractors or equipment, 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, any subdivision of this state, or any municipality of this state, and privately owned 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, semi-trailers 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 driver's 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 persons with disabilities.

(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.

15A. “*Crane*” means a machine for raising, shifting, and lowering heavy weights by means of a projecting swinging arm.

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.

20A. “*Driver’s 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 temporary restricted or temporary license and an instruction, chauffeur’s instruction, commercial driver’s instruction, or temporary permit.

For purposes of license suspension, revocation, bar, disqualification, cancellation, or denial under this chapter and chapters 321A, 321C, and 321J, “*driver’s license*” includes any privilege to operate a motor vehicle.

21. “*Endorsement*” means an authorization to a person’s driver’s 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.

24A. “*Fence-line feeder*” means a vehicle used exclusively for the mixing and dispensing of nutrients to bovine animals at a feedlot.

24B. “*Financial liability coverage*” means any of the following:

a. An owner’s policy of liability insurance which is issued by an insurance carrier authorized to do business in Iowa to or for the benefit of the person named in the policy as insured, and insuring the person named as insured and any person using an insured motor vehicle with the express or implied permission of the named insured against loss from liability imposed by law for damages arising out of the ownership, maintenance, or use of an insured motor vehicle within the United States of America or Canada, but subject to minimum limits, exclusive of interest and costs, in the amounts specified in section 321A.21 or specified in another provision of the Code, whichever is greater.

b. A bond filed with the department pursuant to section 321A.24.

c. A valid statement issued by the treasurer of state pursuant to section 321A.25 attesting to the filing of a certificate of deposit with the treasurer of state.

d. A valid certificate of self-insurance issued by the department pursuant to section 321A.34.

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.

28A. “*Grain cart*” means a vehicle with a non-steerable single or tandem axle designed to move grain.

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 a vehicle or special mobile equipment manufactured, designed, or reconstructed for agricultural purposes and, except for incidental uses, exclusively used in the conduct of agricultural operations. “*Implements of husbandry*” includes all-terrain vehicles operated in compliance with section 321.234A, fence-line feeders, and vehicles used exclusively for the application of organic or inorganic plant food materials, organic agricultural limestone, or agricultural chemicals. To be considered an implement of husbandry, a self-propelled implement of husbandry must be operated at speeds of thirty-five miles per hour or less. “*Reconstructed*” as used in this subsection means materially altered from the original construction by the removal, addition, or substitution of essential parts, new or used.

A vehicle covered under this subsection, if it otherwise qualifies, may be operated as special mobile equipment and under such circumstances this subsection shall not be applicable to such vehicle, and such vehicle shall not be required to

comply with sections 321.384 through 321.423, when such vehicle is moved during daylight hours; 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.

36A. “*Low-speed vehicle*” means a motor vehicle manufactured in compliance with the national highway and traffic safety administration standards for low-speed vehicles in 49 C.F.R. § 571.500. A low-speed vehicle which is in compliance with the equipment requirements in 49 C.F.R. § 571.500 shall be deemed to be in compliance with all equipment requirements of this chapter.

36B. “*Manufactured home*” is a factory-built structure constructed under authority of 42 U.S.C. § 5403, which 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.

36C. a. “*Manufactured or 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 manufactured or 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 connecting device known as a fifth wheel. However, this type of travel trailer may have an overall length which shall not exceed forty feet.

d. *“Motor home”* means a motor vehicle designed as an integral unit to be used as a conveyance upon the public streets and highways and for use as a temporary or recreational dwelling and having at least four, two of which shall be systems specified in subparagraphs (1), (4), or (5) of this paragraph, of the following permanently installed systems which meet American national standards institute and national fire protection association standards in effect on the date of manufacture:

- (1) Cooking facilities.
- (2) Ice box or mechanical refrigerator.
- (3) Potable water supply including plumbing and a sink with faucet either self-contained or with connections for an external source, or both.
- (4) Self-contained toilet or a toilet connected to a plumbing system with connection for external water disposal, or both.
- (5) Heating or air conditioning system or both, separate from the vehicle engine or the vehicle engine electrical system.
- (6) A one hundred ten – one hundred fifteen volt alternating current electrical system separate from the vehicle engine electrical system either with its own power supply or with a connection for an external source, or both, or a liquefied petroleum system and supply.

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 ve-

hicle, 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. Reserved.

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 motor vehicle or new car”* means a motor vehicle subject to registration 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. Reserved.

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 mechani-

cally 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.

54A. “*Product identification number*” or the acronym PIN means a group of unique numerical or alphabetical designations assigned to a complete fence-line feeder, grain cart, or tank wagon by the manufacturer or by the department and affixed to the vehicle, pursuant to rules adopted by the department, as a means of identifying the vehicle or the year of manufacture.

54B. “*Proof of financial liability coverage card*” means either a liability insurance card issued under section 321.20B, a bond insurance card issued under section 321A.24, a security insurance card issued under section 321A.25, or a self-insurance card issued under section 321A.34.

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.

63A. “*Retractable axle*” means an axle designed with the capability of manipulation or adjustment of the weight on the axle.

64. “*Right-of-way*” means the privilege of the immediate use of the highway.

64A. “*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.

65. “*Roadway*” means that portion of a highway improved, designed, or ordinarily used for vehicular travel.

66. “*Road work zone*” means the portion of a highway which is identified by posted or moving signs as the site of construction, maintenance, survey, or utility work. The zone starts upon meeting the first sign identifying the zone and continues until a posted or moving sign indicates that the work zone has ended.

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 or a regional transit system as defined in section 324A.1 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 fifteen thousand 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.

80A. “*Tank wagon*” means a vehicle designed to carry liquid animal or human excrement.

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.

83A. “*Towing or recovery vehicle*” means a motor vehicle equipped with booms, winches, slings, or wheel lifts used to tow, recover, or transport other motor vehicles.

83B. “*Tracked implement of husbandry*” means a fence-line feeder, grain cart, or tank wagon that is mounted on a chassis attached to a pair of tracks that transfer the weight of the implement to the ground or the roadway surface.

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 semitrailer 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.

2001 Acts, ch 32, §15; 2001 Acts, ch 132, §1; 2001 Acts, ch 153, §15, 17; 2001 Acts, ch 176, §80

Terminology change applied

Subsection 20A, unnumbered paragraph 1 amended

Section 39 amended and renumbered as 36C

NEW subsection 83B

321.11 Records of department.

1. All records of the department, other than those made confidential or not permitted to be open in accordance with 18 U.S.C. § 2721 et seq., adopted as of a specific date by rule of the department, shall be open to public inspection during office hours.

2. Notwithstanding subsection 1, personal information shall not be disclosed to a requestor, except as provided in 18 U.S.C. § 2721, unless the person whose personal information is requested has provided express written consent allowing disclosure of the person’s personal information. As used in this section, “*personal information*” means information that identifies a person, including a person’s photograph, social security number, driver’s license number, name, address, telephone number, and medical or disability information, but does not include information on vehicular accidents, driving violations, and driver’s status or a person’s zip code.

3. Notwithstanding other provisions of this section to the contrary, the department shall not release personal information to a person, other than to an officer or employee of a law enforcement agency, an employee of a federal or state agency or

political subdivision in the performance of the employee's official duties, a contract employee of the department of inspections and appeals in the conduct of an investigation, or a licensed private investigation agency or a licensed security service or a licensed employee of either, if the information is requested by the presentation of a registration plate number. In addition, an officer or employee of a law enforcement agency may release the name, address, and telephone number of a motor vehicle registrant to a person requesting the information by the presentation of a registration plate number if the officer or employee of the law enforcement agency believes that the release of the information is necessary in the performance of the officer's or employee's duties.

4. The department shall not release personal information that is in the form of a person's photograph or digital image or a digital reproduction of a person's photograph to a person other than an officer or employee of a law enforcement agency, an employee of a federal or state agency or political subdivision in the performance of the employee's official duties, a contract employee of the department of inspections and appeals in the conduct of an investigation, or a licensed private investigation agency or a licensed security service or a licensed employee of either, regardless of whether a person has provided express written consent to disclosure of the information. The department may collect reasonable fees for copies of records or other services provided pursuant to this section or section 22.3, 321.10, or 622.46.

2001 Acts, ch 90, §1
Subsections 2 and 4 amended

321.16 Giving of notices.

When the department is authorized or required to give notice under this chapter or any other law regulating the operation of vehicles, unless a different method of giving notice is expressly prescribed, notice shall be given either by personal delivery to the person to be so notified or by personal service in the manner of original notice by R.C.P. 56.1, paragraph "a," or by first class mail addressed to the person at the address shown in the records of the department, notwithstanding chapter 17A. The department shall adopt rules regarding the giving of notice by first class mail, the updating of addresses in department records, and the development of affidavits verifying the mailing of notices under this chapter and chapter 321J. A person's refusal to accept or a claim of failure to receive a notice of revocation, suspension, or bar mailed by first class mail to the person's last known address shall not be a defense to a charge of driving while suspended, revoked, denied, or barred.

Proof of the giving of notice by personal service may be made by the certificate of any officer or employee of the department or affidavit of any person over eighteen years of age, naming the person to

whom such notice was given and specifying the time, place, and manner of the giving thereof.

2001 Acts, ch 32, §41
Unnumbered paragraph 1 amended

321.17 Misdemeanor to violate registration provisions.

It is a simple misdemeanor punishable as a scheduled violation under section 805.8A, subsection 2, paragraph "b", for any person to drive or move or for an owner knowingly to permit to be driven or moved upon the highway a vehicle of a type required to be registered under this chapter which is not registered, or for which the appropriate fee has not been paid, except as provided in section 321.109, subsection 3.

2001 Acts, ch 176, §49, 59
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 interplant 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 at-

tached to the front and rear of each bus exempt from registration under this subsection.

8. Any mobile home or manufactured home.

2001 Acts, ch 153, §17
Terminology change applied

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 or of a manufactured home shall make application for a certificate of title under this section. The application shall contain:

1. The full legal name; social security number or, if the owner does not have a social security number but has a passport, the passport number; driver's license number, whether the license was issued by this state, another state, another country, or is an international driver's license; date of birth; bona fide residence; and mailing address of the owner and of the lessee if the vehicle is being leased. If the owner or lessee is a firm, association, or corporation, the application shall contain the business address and federal employer identification number of the owner or lessee. Up to three owners' names may be listed on the application. Information relating to the lessee of a vehicle shall not be required on an application for registration and a certificate of title for a vehicle with a gross vehicle weight rating of ten thousand pounds or more.

2. A description of the vehicle including, insofar as the 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. If the vehicle is a new low-speed vehicle, the manufacturer's or importer's certificate required to accompany the application under subsection 4 shall certify that the vehicle was manufactured in compliance with the national highway and traffic safety administration standards for low-speed vehicles in 49 C.F.R. § 571.500.

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.

6. If the vehicle is owned by a nonresident but is subject to issuance of an Iowa certificate of title or registration, the application shall also contain the full legal name; social security number, or, if the primary user does not have a social security number but has a passport, the passport number; driver's license number, whether the license was issued by this state, another state, another country, or is an international driver's license; date of birth; bona fide residence; and mailing address of the primary user of the vehicle. If the primary user is a firm, association, or corporation, the application shall contain the business address and federal employer identification number of the primary user. The primary user's name and address shall not be printed on the registration receipt or the certificate of title.

Notwithstanding contrary provisions of this chapter or chapter 326 regarding titling and registration by means other than electronic means, the department may develop and implement a program to test the feasibility of electronic applications, titling, registering, and electronic funds transfer for vehicles traveling in interstate commerce in order to improve the efficiency and timeliness of the processes and to reduce costs for all parties involved.

The department shall adopt rules on the method for providing signatures for applications made by electronic means.

2000 Acts, ch 1016, §39–41, 47; 2000 Acts, ch 1134, §1; 2001 Acts, ch 153, §17

Surcharge imposed; §321.52A
2000 amendments to subsection 1, new subsection 6, and new unnumbered paragraph 3 are effective July 1, 2001; 2000 Acts, ch 1016, §47
Terminology change applied
Subsection 1 amended
NEW subsection 6
NEW unnumbered paragraph 3

321.20A Certificate of title — commercial vehicles.

1. Notwithstanding other provisions of this

chapter, the owner of a commercial vehicle subject to the proportional registration provisions of chapter 326 may make application to the department or the appropriate county treasurer for a certificate of title. The application for certificate of title shall be made within thirty days of purchase or transfer and shall be accompanied by a ten dollar title fee and the appropriate use tax. The department or the county treasurer shall deliver the certificate of title to the owner if no security interest or encumbrance appears on the certificate or to the person holding the first security interest or encumbrance shown on the certificate of title.

2. An owner of a commercial vehicle subject to the proportional registration provisions of chapter 326 who has a fleet of more than fifty commercial vehicles and who is issued a certificate of title under this section shall not be subject to registration fees until the commercial vehicle is driven or moved upon the highways. The registration fee due shall be prorated for the remaining unexpired months of the registration year. Ownership of the commercial vehicle shall not be transferred until registration fees have been paid to the department.

2001 Acts, ch 132, §2
Surcharge imposed, §321.52A
Section amended

321.20B Proof of security against liability — driving without liability coverage.

1. Notwithstanding chapter 321A, which requires certain persons to maintain proof of financial responsibility, a person shall not drive a motor vehicle on the highways of this state unless financial liability coverage, as defined in section 321.1, subsection 24B, is in effect for the motor vehicle and unless the driver has in the motor vehicle the proof of financial liability coverage card issued for the motor vehicle, or if the vehicle is registered in another state, other evidence that financial liability coverage is in effect for the motor vehicle.

It shall be conclusively presumed that a motor vehicle driven upon a parking lot which is available to the public without charge or which is available to customers or invitees of a business or facility without charge was driven on the highways of this state in order to enter the parking lot, and this section shall be applicable to such a motor vehicle. As used in this section, “*parking lot*” includes access roads, drives, lanes, aisles, entrances, and exits to and from a parking lot described in this paragraph.

This subsection does not apply to the operator of a motor vehicle owned by or leased to the United States, this state or another state, or any political subdivision of this state or of another state, or to a motor vehicle which is subject to section 325A.6 or 327B.6.

2. *a.* An insurance company transacting business in this state shall issue to its insured owners of motor vehicles registered in this state a finan-

cial liability coverage card for each motor vehicle insured. Each financial liability coverage card shall identify the registration number or vehicle identification number of the motor vehicle insured and shall indicate the expiration date of the applicable insurance coverage. The financial liability coverage card shall also contain the name and address of the insurer or the name of the insurer and the name and address of the insurance agency, the name of the insured, and an emergency telephone number of the insurer or emergency telephone number of the insurance agency.

b. The insurance division and the department, as appropriate, shall adopt rules regarding the contents of a financial liability coverage card to be issued pursuant to this section. Notwithstanding the provisions of this section, a fleet owner is not required to maintain in each vehicle a financial liability coverage card with the individual registration number or the vehicle identification number of the vehicle included on the card. Such fleet owner shall be required to maintain a financial liability coverage card in each vehicle in the fleet including information deemed appropriate by the commissioner of insurance or the director, as applicable.

3. If the financial liability coverage for a motor vehicle which is registered in this state is canceled or terminated effective prior to the expiration date indicated on the financial liability coverage card issued for the vehicle, the person to whom the financial liability coverage card was issued shall destroy the card.

4. *a.* If a peace officer stops a motor vehicle registered in this state and the driver is unable to provide proof of financial liability coverage, the peace officer shall do one of the following:

(1) Issue a warning memorandum to the driver.

(2) Issue a citation to the driver. If a citation is issued, the citation shall be issued under this subparagraph unless the driver has been previously charged and cited for a violation of subsection 1. A citation which is issued and subsequently dismissed shall be disregarded for purposes of determining if the driver has been previously charged and cited.

(3) Issue a citation and remove the motor vehicle’s license plates and registration receipt. Upon removing the license plates and registration receipt, the peace officer shall deliver the plates for destruction, as appropriate, and forward the registration receipt and evidence of the violation, as determined by the department, to the county treasurer of the county in which the motor vehicle is registered. The motor vehicle may be driven for a time period of up to forty-eight hours after receiving the citation solely for the purpose of removing the motor vehicle from the highways of this state, unless the driver’s operating privileges are otherwise suspended.

After receiving the citation, the driver shall keep the citation in the motor vehicle at all times while driving the motor vehicle as provided in this subparagraph, as proof of the driver's privilege to drive the motor vehicle for such limited time and purpose.

(4) (a) Issue a citation, remove the motor vehicle's license plates and registration receipt, and impound the motor vehicle. The peace officer shall deliver the plates for destruction, as appropriate, and forward the registration receipt and evidence of the violation, as determined by the department, to the county treasurer of the county in which the motor vehicle is registered.

(b) A motor vehicle which is impounded may be claimed by a person if the owner provides proof of financial liability coverage and proof of payment of any applicable fine and the costs of towing and storage for the motor vehicle. If the motor vehicle is not claimed within thirty days after impoundment, the motor vehicle may be treated as an abandoned vehicle pursuant to section 321.89.

(c) The holder of a security interest in a motor vehicle which is impounded pursuant to this subparagraph shall be notified of the impoundment within seventy-two hours of the impoundment of the motor vehicle and shall have the right to claim the motor vehicle upon the payment of all fees. However, if the value of the vehicle is less than the security interest, all fees shall be divided equally between the lienholder and the political subdivision impounding the vehicle.

b. An owner or driver of a motor vehicle who is charged with a violation of subsection 1 and issued a citation under paragraph "a", subparagraph (3) or (4), is subject to the following:

(1) An owner or driver who produces to the clerk of court, within thirty days of the issuance of the citation under paragraph "a", or prior to the date of the individual's court appearance as indicated on the citation, whichever is earlier, proof that financial liability coverage was in effect for the motor vehicle at the time the person was stopped and cited, or, if the driver is not the owner of the motor vehicle, proof that liability coverage was in effect for the driver with respect to the motor vehicle being driven at the time the driver was stopped and cited, in the same manner as if the motor vehicle were owned by the driver, shall be given a receipt indicating that such proof was provided and be subject to one of the following:

(a) If the person was cited pursuant to paragraph "a", subparagraph (3), the owner or driver shall provide a copy of the receipt to the county treasurer of the county in which the motor vehicle is registered and the owner shall be assessed a fifteen dollar administrative fee by the county treasurer who shall issue new license plates and registration to the person after payment of the fee.

(b) If the person was cited pursuant to paragraph "a", subparagraph (4), the owner or driver, after the owner provides proof of financial liability

coverage to the clerk of court, may claim the motor vehicle after such person pays any applicable fine and the costs of towing and storage for the motor vehicle, and the owner or driver provides a copy of the receipt and the owner pays to the county treasurer of the county in which the motor vehicle is registered a fifteen dollar administrative fee, and the county treasurer shall issue new license plates and registration to the person.

(2) An owner or driver who is charged with a violation of subsection 1 and is unable to show that financial liability coverage was in effect for the motor vehicle at the time the person was stopped and cited may do either of the following:

(a) Sign an admission of violation on the citation and remit to the clerk of court a scheduled fine as provided in section 805.8, subsection 2, for a violation of subsection 1. Upon payment of the fine to the clerk of court of the county where the citation was issued, payment of a fifteen dollar administrative fee to the county treasurer of the county in which the motor vehicle is registered, and providing proof of payment of any applicable fine and proof of financial liability coverages to the county treasurer of the county in which the motor vehicle is registered, the treasurer shall issue new license plates and registration to the owner.

(b) Request an appearance before the court on the matter. If the matter goes before the court, and the owner or driver is found guilty of a violation of subsection 1, the court may impose a fine as provided in section 805.8, subsection 2, for a violation of subsection 1, or the court may order the person to perform unpaid community service instead of the fine. Upon the payment of the fine or the entry of the order for unpaid community service, the person shall provide proof of payment or entry of such order and the county treasurer of the county in which the motor vehicle is registered shall issue new license plates and registration to the owner upon the owner providing proof of financial liability coverage and paying a fifteen dollar administrative fee to the county treasurer.

c. An owner or driver cited for a violation of subsection 1, who produces to the clerk of court within thirty days of the issuance of the citation proof that financial liability coverage was in effect for the motor vehicle at the time the person was stopped and cited, shall not be convicted of such violation and the citation issued shall be dismissed.

5. If the motor vehicle is not registered in this state and the driver is a nonresident, the peace officer shall do one of the following:

a. Issue a warning memorandum to the driver.

b. Issue a citation. An owner or driver who produces to the clerk of court within thirty days of the issuance of the citation, or prior to the date of the individual's court appearance as indicated on the citation, whichever is earlier, proof that the financial liability coverage was in effect for the motor vehicle at the time the person was stopped and

cited, or if the driver is not the owner of the motor vehicle, proof that liability coverage was in effect for the driver with respect to the motor vehicle being driven at the time the driver was stopped and cited in the same manner as if the motor vehicle were owned by the driver, shall be given a receipt indicating that proof was provided, and the citation issued shall be dismissed.

6. This section does not apply to a snowmobile or all-terrain vehicle or to a motor vehicle identified in section 321.18, subsections 1 through 6, and subsection 8.

7. This section does not apply to a lienholder who has a security interest in a motor vehicle subject to the registration requirements of this chapter, so long as such lienholder maintains financial liability coverage for any motor vehicle driven or moved by the lienholder in which the lienholder has an interest.

8. This section does not apply to a motor vehicle owned by a motor vehicle dealer or wholesaler licensed pursuant to chapter 322.

9. The director of transportation and the commissioner of insurance shall adopt rules pursuant to chapter 17A to administer this section.

2001 Acts, ch 32, §16

For applicable scheduled fines, see §805.8A, subsection 14, paragraph F
Subsection 6 amended

321.24 Issuance of registration and certificate of title.

1. 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 or manufactured home, that taxes are not owing under chapter 435, issue a certificate of title and, except for a mobile home or manufactured 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 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 name and address of any lessee of the vehicle shall not be printed on the registration receipt or certificate of title. Up to three owners may be listed on the registration receipt and certificate of title.

2. 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.

3. 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 title number assigned to the owner or owners of the vehicle, 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.

4. 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.

5. 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.

6. If the prior certificate of title is from another state and indicates that the vehicle was returned to the manufacturer pursuant to a law of another state similar to chapter 322G, the new registration receipt and certificate of title, and all subsequent registration receipts and certificates of title issued for the vehicle, shall contain a designation indicating the vehicle was returned to the manufacturer. The department shall determine the manner in which other states' designations are to be indicated on Iowa registration receipts

and certificates of title. The department may determine that a “REBUILT” or “SALVAGE” designation supersedes the designation required by this subsection and include the “REBUILT” or “SALVAGE” designation on the registration receipt and certificate of title in lieu of the designation required by this subsection.

7. 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 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 or manufactured 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.

8. 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.

9. 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.

10. 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. Except for a vehicle registered under chapter 326, a vehicle registered for the first time during the eleventh month of the owner’s registration year may be registered for the remaining unexpired months of the registration year as provided in this paragraph or for the remaining unexpired months of the registration year and for the next registration year, upon payment of the applicable registration fees.

11. 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.

2000 Acts, ch 1016, §42, 47; 2000 Acts, ch 1028, §1, 4; 2001 Acts, ch 153, §17

2000 amendments to subsections 1, 3, 7, and 10 are effective July 1, 2001; 2000 Acts, ch 1016, §47; 2000 Acts, ch 1028, §4
Subsections 1, 3, 7, and 10 amended

321.25 Application for registration and title — cards attached.

A vehicle may be operated upon the highways of this state without registration plates for a period of forty-five days after the date of delivery of the vehicle to the purchaser from a dealer if a card bearing the words “registration applied for” is attached on the rear of the vehicle. The card shall have plainly stamped or stenciled the registration number of the dealer from whom the vehicle was purchased and the date of delivery of the vehicle. In addition, a dealer licensed to sell new motor vehicles may attach the card to a new motor vehicle delivered by the dealer to the purchaser even if the vehicle was purchased from an out-of-state dealer and the card shall bear the registration number of the dealer that delivered the vehicle. A dealer

shall not issue a card to a person known to the dealer to be in possession of registration plates which may be attached to the vehicle. A dealer shall not issue a card unless an application for registration and certificate of title has been made by the purchaser and a receipt issued to the purchaser of the vehicle showing the fee paid by the person making the application. Dealers' records shall indicate the agency to which the fee is sent and the date the fee is sent. The dealer shall forward the application by the purchaser to the county treasurer or state office within thirty calendar days from the date of delivery of the vehicle. However, if the vehicle is subject to a security interest and has been offered for sale pursuant to section 321.48, subsection 1, the dealer shall forward the application by the purchaser to the county treasurer or state office within thirty calendar days from the date of the delivery of the vehicle to the purchaser.

The department shall, upon request by any dealer, furnish "registration applied for" cards free of charge. Only cards furnished by the department shall be used. Only one card shall be issued in accordance with this subsection for each vehicle purchased.

For applicable scheduled fine, see §805.8A, subsection 2, paragraph c
Section not amended; footnote added

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 as-

signed.

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 or manufactured home, that taxes are owing under chapter 435 for a previous year.

11. In the case of a mobile home or manufactured 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.

14. The department or the county treasurer shall refuse registration of a vehicle if the applicant is under the age of eighteen years, unless the applicant has an Iowa driver's license or the application is being made by more than one applicant and one of the applicants is at least eighteen years of age.

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 1, paragraph "d", or section 321.101A, until the fees are paid together with any accrued penalties.

2001 Acts, ch 153, §17
Terminology change applied

321.32 Registration card carried and exhibited.

A vehicle's registration card shall at all times be carried in the vehicle to which it refers and shall be shown to any peace officer upon the officer's request.

For applicable scheduled fine, see §805.8A, subsection 2, paragraph a
Section not amended; footnote added

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 an annual validation sticker indicating payment of registration fees. The department shall issue one validation sticker for each set of registration plates. The sticker shall specify the month and year of expiration of the registration plates. The sticker shall be displayed only on the rear registration plate, except that the sticker shall be displayed on the front registration plate of a truck-tractor.

The state department of transportation shall adopt rules to provide for the placement of the motor vehicle registration validation sticker.

3. *Radio operators plates.* The owner of an automobile, light delivery truck, panel delivery truck, motorcycle, trailer, 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 ra-

dio 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, semitrailers, motor trucks, and truck tractors, 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, and a permanent registration plate for motor trucks and truck tractors licensed under chapter 326, upon payment of the appropriate registration fee. Payment of fees for trailers and semitrailers 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. Payment of fees for motor trucks and truck tractors shall be made on an annual basis.

5. *Personalized registration plates.*

a. Upon application and the payment of a fee of twenty-five dollars, the director may issue to the owner of a motor vehicle registered in this state or a trailer or travel trailer registered in this state, personalized registration plates marked with up to seven initials, letters, or combination of numerals and letters requested by the owner. However, personalized registration plates for motorcycles and motorized bicycles shall be marked with no more than six initials, letters, or combinations of numerals and letters. Upon receipt of the personalized registration plates, the applicant shall surrender the regular registration plates to the county treasurer. The fee for issuance of the personalized registration plates shall be in addition to the regular annual registration fee.

b. The county treasurer shall validate personalized registration plates in the same manner as regular registration plates are validated under this section at an annual fee of five dollars in addition to the regular annual registration fee. A person renewing a personalized registration plate within one month following the time requirements under section 321.40 may renew the personalized plate without paying the additional registration fee under paragraph "a" but shall pay the five-dollar fee in addition to the regular registration fee and any penalties subject to regular registration plate holders for late renewal.

c. The fees collected by the director under this section shall be paid to the treasurer of state and credited by the treasurer of state as provided in section 321.145.

6. *Sample vehicle registration plates.* Vehicle registration plates displaying the general design of regular registration plates, with the word "sample" displayed on the plate, may be furnished to

any person upon payment of a fee of three dollars, except that such plates may be furnished to governmental agencies without cost. Sample registration plates shall not be attached to a vehicle moved on the highways of this state.

7. *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 "b", 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.

8. *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, motorcycle, trailer, 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.

The surviving spouse of a person who was issued special plates under this subsection may continue to use the special plates subject to registration of the special plates in the surviving spouse's name and upon payment of the fifteen dollar annual registration fee. If the surviving spouse remarries, the surviving spouse shall return the special plates to the department and the department shall issue regular registration plates to the surviving spouse.

8A. *Ex-prisoner of war special plates.* The owner of a motor vehicle subject to registration under section 321.109, subsection 1, light delivery truck, panel delivery truck, motorcycle, trailer, 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 only one set of special registration plates with an ex-prisoner of war processed emblem. The emblem shall be designed by the de-

partment in cooperation with the adjutant general and shall signify that the owner was a prisoner of war as described in this subsection. The application is subject to approval by the department, in consultation with the adjutant general. The special plates shall be issued at no charge and are subject to an annual registration fee of fifteen dollars. The county treasurer shall validate the special plates in the same manner as regular registration plates are validated under this section.

The surviving spouse of a person who was issued special plates under this subsection may continue to use or apply for and use the special plates subject to registration of the special plates in the surviving spouse's name and upon payment of the annual registration fee. If the surviving spouse remarries, the surviving spouse shall return the special plates to the department and the department shall issue regular registration plates to the surviving spouse.

9. *Leased vehicles.* Registration plates under this section, including disabled veteran plates specified in section 321.105, 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.

10. *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, motorcycle, trailer, 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.

10A. *Emergency medical services 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, motorcycle, trailer, or travel trailer who is a current member of a paid or volunteer emergency medical services agency may, upon written application to the department, order special registration plates, designed by the

department in cooperation with representatives designated by the Iowa emergency medical services association, which plates signify that the applicant is a current member of a paid or volunteer emergency medical services agency. The application shall be approved by the department, in consultation with representatives designated by the Iowa emergency medical services association, 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.

11. *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, motorcycle, trailer, 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 "b", 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 re-

sources fee shall be credited as provided under paragraph “c”.

11A. *Love our kids plates.*

a. Upon application and payment of the proper fees, the director may issue “love our kids” 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, motorcycle, trailer, or travel trailer.

b. Love our kids plates shall be designed by the department in cooperation with the Iowa department of public health.

c. The special fee for letter number designated love our kids plates is thirty-five dollars. The fee for personalized love our kids plates is twenty-five dollars, which shall be paid in addition to the special love our kids 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 “b”, the treasurer of state shall transfer monthly from those revenues to the Iowa department of public health the amount of the special fees collected in the previous month for the love our kids plates. Notwithstanding section 8.33, moneys transferred under this subsection shall not revert to the general fund of the state.

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 love our kids 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 love our kids plates is five dollars, which shall be paid in addition to the annual special love our kids fee and the regular annual registration fee. The annual love our kids fee shall be credited as provided under paragraph “c”.

11B. *Motorcycle rider education plates.*

a. Upon application and payment of the proper fees, the director may issue “motorcycle rider education” 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, motorcycle, trailer, or travel trailer.

b. Motorcycle rider education plates shall be designed by the department.

c. The special fee for letter number designated motorcycle rider education plates is thirty-five dollars. The fee for personalized motorcycle rider education plates is twenty-five dollars, which shall be paid in addition to the special motorcycle rider education 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 “b”, the treasurer of state shall transfer monthly from those revenues to the department for use in accordance with section 321.180B, subsection 6, the amount of the special fees collected in the previous month for the motorcycle rider education 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 motorcycle rider education 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 motorcycle rider education plates is five dollars, which shall be paid in addition to the annual special motorcycle rider education fee and the regular annual registration fee. The annual motorcycle rider education fee shall be credited as provided under paragraph “c”.

12. *Special registration plates — general provisions.*

a. 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, motorcycle, trailer, or travel trailer may, upon written application to the department, order special registration plates with a distinguishing processed emblem as authorized by this section or as approved by the department. The fee for the issuance of special registration plates is twenty-five dollars for each vehicle, unless otherwise provided by this section, which fee is in addition to the regular annual registration fee. The county treasurer shall validate special registration plates with a distinguishing processed emblem in the same manner as regular registration plates, upon payment of five dollars in addition to the regular annual registration fee.

b. Upon receipt of a special registration plate with a distinguishing processed emblem as authorized by this section or as approved by the department, the applicant shall surrender the regular registration plates to the county treasurer. An applicant no longer eligible for a special registration plate shall surrender the special vehicle registration plates to the county treasurer for issuance of regular registration plates.

c. An applicant may, upon payment of the additional fee for a personalized plate as provided in subsection 5, obtain a personalized special registration plate with a processed emblem. Personalized plates authorized by this section with the processed emblem shall be limited to no more than

five initials, letters, or combinations of numerals and letters.

d. A special registration plate issued for a motorcycle or motorized bicycle under this section shall be designated in the manner provided for personalized registration plates under subsection 5, paragraph “a”.

12A. *Special registration plates — armed forces services.* An owner of a vehicle referred to in subsection 12 who applies for any type of special registration plates associated with service in the United States armed forces shall be issued one set of the special registration plates at no charge, but shall be subject to the annual registration fee of fifteen dollars if all of the following conditions are met:

a. The owner is eligible for, but has relinquished to the department or the county treasurer or has not been issued, congressional medal of honor, ex-prisoner of war, or legion of merit special registration plates under this section, or disabled veteran registration plates under section 321.105.

b. The owner provides the appropriate information regarding the owner’s eligibility for any of the special registration plates described in paragraph “a”, and regarding the owner’s eligibility for the special registration plates for which the owner has applied, as required by the department.

A disabled veteran shall be exempt from payment of the fifteen dollar annual registration fee as provided in section 321.105.

Upon the death of the vehicle owner entitled to the special registration plates, the special registration plates shall be surrendered to the department or the county treasurer.

13. *New special registration plates — department review.*

a. Any person may submit a request to the department to recommend a new special registration plate with a processed emblem. The request shall provide a proposed design for the processed emblem, the purpose of the special registration plate with the processed emblem, any eligibility requirements for purchase or receipt of the special registration plate with the processed emblem, and evidence there is sufficient interest in the special registration plate with the processed emblem to pay implementation costs. The department shall consider the request and make a recommendation based upon criteria established by the department which shall include consideration of the information included in the request, the number of special registration plates with processed emblems currently authorized, and any other relevant factors.

b. If a request for a proposed special registration plate with a processed emblem meets the criteria established by the department, the department shall, in consultation with the persons seeking the special registration plate with the processed emblem, approve a recommended design for the processed emblem, and propose eligibility requirements for the special registration plate

with the processed emblem.

c. The department shall adopt rules pursuant to chapter 17A regarding the approval and issuance of special registration plates.

d. A state agency may submit a request to the department recommending a special registration plate. The alternate fee for letter number designated plates is thirty-five dollars with a ten dollar annual special renewal fee. The fee for personalized plates is twenty-five dollars which is in addition to the alternative fee of thirty-five dollars with an annual personalized plate renewal fee of five dollars which is in addition to the special renewal fee of ten dollars. The alternate fees are in addition to the regular annual registration fee. The alternate fees collected under this paragraph 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 the revenues to the road use tax fund under section 423.24, subsection 1, paragraph “b”, the treasurer of state shall credit monthly the amount of the alternate fees collected in the previous month to the state agency that recommended the special registration plate.

14. *Persons with disabilities special plates.* An owner referred to in subsection 12 or an owner of a trailer used to transport a wheelchair who is a person with a disability, or who is the parent or guardian of a child who resides with the parent or guardian owner and who is a person with a disability, as defined in section 321L.1, may, upon written application to the department, order special registration plates with a persons with disabilities processed emblem designed by the department bearing the international symbol of accessibility. The special registration plates with a persons with disabilities processed emblem shall only be issued if the application is accompanied with a statement from a physician licensed under chapter 148, 149, 150, or 150A, a physician assistant licensed under chapter 148C, an advanced registered nurse practitioner licensed under chapter 152, or a chiropractor licensed under chapter 151, written on the physician’s, physician assistant’s, nurse practitioner’s, or chiropractor’s stationery, stating the nature of the applicant’s or the applicant’s child’s disability and such additional information as required by rules adopted by the department, including proof of residency of a child who is a person with a disability. If the application is approved by the department, the special registration plates with a persons with disabilities processed emblem shall be issued to the applicant. There shall be no fee in addition to the regular annual registration fee for the special registration plates with a persons with disabilities processed emblem. The authorization for special registration plates with a persons with disabilities processed emblem shall not be renewed without the applicant furnishing evidence to the department that the owner of the vehicle or the owner’s child

is still a person with a disability as defined in section 321L.1. An owner who has a child who is a person with a disability shall provide satisfactory evidence to the department that the child with a disability continues to reside with the owner. The registration plates with a persons with disabilities processed emblem shall be surrendered in exchange for regular registration plates as provided in subsection 12 when the owner of the vehicle or the owner's child no longer qualifies as a person with a disability as defined in section 321L.1 or when the owner's child who is a person with a disability no longer resides with the owner.

15. *Legion of merit special plates.* The owner of a motor vehicle subject to registration under section 321.109, subsection 1, light delivery truck, panel delivery truck, motorcycle, trailer, or pickup who has been awarded the legion of merit may, upon written application to the department and presentation of satisfactory proof of the award of the legion of merit as established by the Congress of the United States, order special registration plates with a legion of merit processed emblem. The emblem shall be designed by the department in cooperation with the adjutant general and shall signify that the owner was awarded the legion of merit. The application is subject to approval by the department, in consultation with the adjutant general. The special plates shall be issued at no charge and are subject to an annual registration fee of fifteen dollars. The county treasurer shall validate the special plates in the same manner as regular registration plates are validated under this section.

The surviving spouse of a person who was issued special plates under this subsection may continue to use or apply for and use the special plates subject to registration of the special plates in the surviving spouse's name and upon payment of the annual registration fee. If the surviving spouse remarries, the surviving spouse shall return the special plates to the department and the department shall issue regular registration plates to the surviving spouse.

16. *National guard special plates.* An owner referred to in subsection 12 who is a member of the national guard, as defined in chapter 29A, may, upon written application to the department, order special registration plates with a national guard processed emblem with the emblem designed by the department in cooperation with the adjutant general which emblem signifies that the applicant is a member of the national guard. The application shall be approved by the department in consultation with the adjutant general. Special registration plates with a national guard processed emblem shall be surrendered, as provided in subsection 12, in exchange for regular registration plates upon termination of the owner's membership in the active national guard.

17. *Pearl Harbor special plates.* An owner referred to in subsection 12 who was at Pearl Har-

bor, 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 with a Pearl Harbor processed emblem. The emblem shall be designed by the department in consultation with service organizations. The application is subject to approval by the department.

18. *Purple heart special plates.* An owner referred to in subsection 12 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 with a purple heart processed emblem. The design of the emblem shall include a representation of a purple heart medal and ribbon. The application is subject to approval by the department in consultation with the adjutant general.

19. *United States armed forces retired special plates.* An owner referred to in subsection 12 who is a retired member of the United States armed forces may, upon written application to the department and upon presentation of satisfactory proof of membership, order special registration plates with a United States armed forces retired processed emblem. The emblem shall be designed by the department in consultation with service organizations. The application is subject to approval by the department. For purposes of this subsection, a person is considered to be retired if the person is recognized by the United States armed forces as retired from the United States armed forces.

20. *Silver or bronze star plates.* An owner referred to in subsection 12 who was awarded a silver or a bronze star by the United States government, may, upon written application to the department and presentation of satisfactory proof of the award of the silver or bronze star, order special registration plates with a silver or bronze star processed emblem. The emblem shall be designed by the department in consultation with the adjutant general.

21. *Iowa heritage special plates.*

a. An owner referred to in subsection 12 may, upon written application to the department, order special registration plates with an Iowa heritage emblem. The emblem shall contain a picture of the American gothic house and the words "Iowa Heritage" and shall be designed by the department in consultation with the state historical society of Iowa.

b. The special Iowa heritage fee for letter number designated plates is thirty-five dollars. The special fee for personalized Iowa heritage plates is twenty-five dollars which shall be paid in addition to the special fee of thirty-five dollars. The annual special Iowa heritage fee is ten dollars for letter number designated registration plates and is fif-

teen dollars for personalized registration plates which shall be paid in addition to the regular annual registration fee.

c. The special 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 "b", the treasurer of state shall credit monthly to the Iowa heritage fund created under section 303.9A the amount of the special fees collected in the previous month for the Iowa heritage plates.

22. Education plates.

a. An owner referred to in subsection 12, upon written application to the department, may order special registration plates with an education emblem. The education emblem shall be designed by the department in cooperation with the department of education.

b. The special school transportation fee for letter number designated education plates is thirty-five dollars. The fee for personalized education plates is twenty-five dollars, which shall be paid in addition to the special school transportation fee of thirty-five dollars. The annual special school transportation fee is ten dollars for letter number designated registration plates and is fifteen dollars for personalized registration plates which shall be paid 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 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 "b", the treasurer of state shall transfer monthly from those revenues to the school budget review committee in accordance with section 257.31, subsection 17, the amount of the special school transportation fees collected in the previous month for the education plates.

2001 Acts, ch 24, §73, 74; 2001 Acts, ch 32, §17; 2001 Acts, ch 144, §2, 3
For applicable scheduled fines, see §805.8A, subsection 2, paragraph a
NEW subsection 12A
Subsection 21, paragraph c amended

321.37 Display of plates.

1. Registration plates issued for a motor vehicle other than a motorcycle, motorized bicycle or a truck tractor shall be attached to the motor vehicle, one in the front and the other in the rear. The registration plate issued for a motorcycle or other vehicle required to be registered hereunder shall be attached to the rear of the vehicle. The registration plate issued for a truck tractor shall be attached to the front of the truck tractor. The special plate issued to a dealer shall be attached on the rear of the vehicle when operated on the highways of this state.

2. Registration plates issued for a motor ve-

hicle which is model year 1948 or older, and reconstructed or specially constructed vehicles built to resemble a model year 1948 vehicle or older, other than a truck registered for more than five tons, motorcycle, or truck tractor, may display one registration plate on the rear of the vehicle if the other registration plate issued to the vehicle is carried in the vehicle at all times when the vehicle is operated on a public highway.

3. It is unlawful for the owner of a vehicle to place any frame around or over the registration plate which does not permit full view of all numerals and letters printed on the registration plate.

For applicable scheduled fine, see §805.8A, subsection 2, paragraph a
Unnumbered paragraphs 1 – 3 editorially designated as subsections 1

– 3

Section not amended; footnote added

321.38 Plates, method of attaching — imitations prohibited.

Every registration plate shall at all times be securely fastened in a horizontal position to the vehicle for which it is issued so as to prevent the plate from swinging and at a height of not less than twelve inches from the ground, measuring from the bottom of the plate, in a place and position to be clearly visible and shall be maintained free from foreign materials and in a condition to be clearly legible. An imitation plate or plates imitating or purporting to imitate the official registration plate of any other state or territory of the United States or of any foreign government shall not be fastened to the vehicle.

For applicable scheduled fine, see §805.8A, subsection 2, paragraph a
Section not amended; footnote added

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 prior to 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. Application for renewal for a vehicle registered under chapter 326 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.

On or before the fifteenth day of the eleventh month of a vehicle's registration year 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 by the department through the distributed teleprocessing network that the person has not paid restitution as defined under section 910.1, subsection 4, to a clerk of the court located within the state. Each clerk of court shall, on a daily basis, notify the department through the Iowa court information system of the full name and social security number of all persons who owe delinquent restitution and whose restitution obligation has been satisfied or canceled. This paragraph does not apply to the transfer of a registration or the issuance of a new registration.

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.

2000 Acts, ch 1028, §2, 4
2000 amendment takes effect July 1, 2001; 2000 Acts, ch 1028, §4
Unnumbered paragraphs 1 and 2 amended

321.41 Change of address or name or fuel type.

1. Whenever any person after making application for or obtaining the registration of a vehicle shall move from the address named in the application or shown upon a registration card such person shall within ten days thereafter notify the county treasurer of the county in which the registration

of said vehicle is of record, in writing of the person's old and new addresses.

2. Whenever the name of any person who has made application for or obtained the registration of a vehicle is thereafter legally changed such person shall within ten days notify the county treasurer of the county in which the title of said vehicle is of record, of such former and new name.

3. A person who has registered a vehicle in a county, other than the county designated on the vehicle registration plate, may apply to the county treasurer where the vehicle is registered for new registration plates upon payment of a fee of five dollars and the return of the former county registration plates.

4. When a motor vehicle is modified to use a different fuel type or to use more than one fuel type the person in whose name the vehicle is registered shall within thirty days notify the county treasurer of the county in which the registration of the vehicle is of record of the new fuel type or alternative fuel types. The county treasurer shall make the record of such changes available to the department of revenue and finance. If the vehicle uses or may use a special fuel the county treasurer shall issue a special fuel identification sticker.

For applicable scheduled fine, see §805.8A, subsection 2, paragraph a
Unnumbered paragraphs 1 - 4 editorially designated as subsections 1 - 4

Section not amended; footnote added

321.42 Lost or damaged certificates, cards, and plates — replacements.

1. If a registration card, plate, or pair of plates is lost or becomes illegible, the owner shall immediately apply for replacement. The fee for a replacement registration card shall be three dollars. The fee for a replacement plate or pair of plates shall be five dollars. When the owner has furnished information required by the department and paid the proper fee, a duplicate, substitute, or new registration card, plate, or pair of plates may be issued.

2. *a.* If a certificate of title is lost or destroyed, the owner or lienholder shall apply for a replacement copy of the original certificate of title. The owner or lienholder of a motor vehicle may also apply for a replacement copy of the original certificate of title upon surrender of the original certificate of title with the application. The application shall be made to the department or county treasurer who issued the original certificate of title. The application shall be signed by the owner or lienholder and accompanied by a fee of ten dollars.

b. After five days, the department or county treasurer shall issue a replacement copy to the applicant at the applicant's most recent address, however, the five-day waiting period does not apply to an applicant who has surrendered the original certificate of title to the department or county treasurer. The replacement copy shall be clearly marked "replacement" and shall include notation

of liens or encumbrances. When a replacement copy has been issued, the previous certificate is void.

c. If a security interest noted on the face of an original certificate of title was released by the lienholder on a separate form pursuant to section 321.50, subsection 4, and the signature of the lienholder, or the person executing the release on behalf of the lienholder, is notarized, but the lienholder has not delivered the original certificate to the appropriate party as provided in section 321.50, subsection 4, the owner may apply for and receive a replacement certificate of title without the released security interest noted thereon. The lienholder shall return the original certificate of title to the department or to the treasurer of the county where the title was issued.

d. A new purchaser or transferee is entitled to receive an original title upon presenting the assigned replacement copy to the treasurer of the county where the new purchaser or transferee resides. At the time of purchase, a purchaser may require the seller to indemnify the purchaser and all future purchasers of the vehicle against any loss which may be suffered due to claims on the original certificate. A person recovering an original certificate of title for which a replacement has been issued shall surrender the original certificate to the county treasurer or the department.

3. If a county treasurer mails vehicle registration documents which become lost or are damaged in transit through the United States postal service, the person to whom the documents were being sent may apply for reissuance without cost. The application shall be made with the county treasurer who originally issued the documents not less than twenty days from the date the documents were placed with the United States postal service. If the original documents are received after reissuance of duplicates, the original documents shall be surrendered to the county treasurer within five days of the time they are received.

2000 Acts, ch 1016, §43, 47
 Surcharge imposed; §321.52A
 2000 amendments to subsection 2 are effective July 1, 2001; 2000 Acts, ch 1016, §47
 Subsection 2, paragraphs a, b, and d amended

321.45 Title must be transferred with vehicle.

1. No manufacturer, importer, dealer or other person shall sell or otherwise dispose of a new vehicle subject to registration under the provisions of this chapter to a dealer to be used by such dealer for purposes of display and lease or resale without delivering to such dealer a manufacturer's or importer's certificate duly executed and with such assignments thereon as may be necessary to show title in the purchaser thereof; nor shall such dealer purchase or acquire a new vehicle that is subject to registration without obtaining from the seller thereof such manufacturer's or importer's certificate. In addition to the assignments stated herein,

such manufacturer's or importer's certificate shall contain thereon the identification and description of the vehicle delivered and the name and address of the dealer to whom said vehicle was originally sold over the signature of an authorized official of the manufacturer or importer who made the original delivery.

For each new mobile home, manufactured 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 other-

wise 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. After acquiring a used mobile home or manufactured home to be titled in Iowa, a mobile home dealer,* as defined in section 322B.2, shall within thirty days apply for and obtain from the county treasurer of the dealer's county of residence a new certificate of title for the mobile home or manufactured home. In the event that there is a prior lien or encumbrance to be released, as required by section 321.50, subsection 4, the thirty-day time period in this subsection does not begin to run until the lien or encumbrance is released.

2001 Acts, ch 153, §17

For applicable scheduled fines, see §805.8A, subsection 2, paragraph c
**"Manufactured or mobile home retailer" probably intended; corrective legislation is pending

Terminology change applied

321.46 New title and registration upon transfer of ownership — credit.

1. The transferee shall within thirty calendar days after purchase or transfer apply for and obtain from the county treasurer of the person's residence, or if a nonresident, the county treasurer of the county where the primary users of the vehicle are located or the county where all other vehicles owned by the nonresident are registered, a new registration and a new certificate of title for the vehicle except as provided in section 321.25, 321.48, or 322G.12. The transferee shall present with the application the certificate of title endorsed and assigned by the previous owner and shall indicate the name of the county in which the vehicle was last registered and the registration expiration date. Unless the transferee is a manufacturer obtaining a new certificate of title pursuant to section 322G.12, the transferee shall be required to list a driver's license number.

2. Upon filing the application for a new registration and a new title, the applicant shall pay a title fee of ten dollars and a registration fee prorated for the remaining unexpired months of the registration year. A manufacturer applying for a certificate of title pursuant to section 322G.12 shall pay a title fee of two dollars. However, a title fee shall not be charged to a manufactured home retailer applying for a certificate of title for a used mobile home or manufactured home, titled in Iowa, as required under section 321.45, subsection 4. The county treasurer, if satisfied of the genuineness and regularity of the application, and in the case of a mobile home or manufactured home, that taxes are not owing under chapter 435, and that applicant has complied with all the requirements of this chapter, shall issue a new certificate of title and, except for a mobile home, manufactured home, or a vehicle returned to and accepted by a manufacturer as described in section 322G.12, a registration card to the purchaser or transferee, shall cancel the prior registration for the vehicle,

and shall forward the necessary copies to the department on the date of issuance, as prescribed in section 321.24. Mobile homes or manufactured homes titled under chapter 448 that have been subject under section 446.18 to a public bidder sale in a county shall be titled in the county's name, with no fee, and the county treasurer shall issue the title.

3. The applicant shall be entitled to a credit for that portion of the registration fee of the vehicle sold, traded, or junked which had not expired prior to the transfer of ownership of the vehicle. The registration fee for the new registration for the vehicle acquired shall be reduced by the amount of the credit. The credit shall be computed on the basis of the number of months remaining in the registration year, rounded to the nearest whole dollar. The credit shall be subject to the following limitations:

a. The credit shall be claimed within thirty days from the date the vehicle for which credit is granted was sold, transferred, or junked. After thirty days, all credits shall be disallowed.

b. Any credit granted to the owner of a vehicle which has been sold, traded, or junked may only be claimed by that person toward the registration fee for another vehicle purchased and the credit may not be sold, transferred, or assigned to any other person.

c. When the amount of the credit is computed to be an amount of less than ten dollars, a credit shall be disallowed.

d. To claim a credit for the unexpired registration fee on a junked vehicle, the county treasurer shall disallow any claim for credit unless the owner presents a junking certificate or other evidence as required by the department to the county treasurer.

e. A credit shall not be allowed to any person who has made claim to receive a refund under section 321.126.

f. The credit shall only be allowed if the owner provides the copy of the registration receipt to the county treasurer.

g. If the credit allowed exceeds the amount of the registration fee for the vehicle acquired, the owner may claim a refund under section 321.126, subsection 6, for the balance of the credit.

h. The credit shall be computed on the unexpired number of months computed from the date of purchase of the vehicle acquired.

4. If the registration fee upon application is delinquent, the applicant shall be required to pay the delinquent fee from the first day the registration fee was due prorated to the month of application for new title.

5. The seller or transferor may file an affidavit on forms prescribed and provided by the department with the county treasurer of the county where the vehicle is registered certifying the sale or transfer of ownership of the vehicle and the assignment and delivery of the certificate of title for

the vehicle. Upon receipt of the affidavit the county treasurer shall file the affidavit with the copy of the registration receipt for the vehicle on file in the treasurer's office and on that day the treasurer shall forward copies of the affidavit to the department and to the county treasurer of the county of residence of the purchaser or transferee. Upon filing the affidavit it shall be presumed that the seller or transferor has assigned and delivered the certificate of title for the vehicle.

6. An applicant for a new registration for a vehicle transferred to the applicant by a spouse, parent or child of the applicant, or by operation of law upon inheritance, devise or bequest, from the applicant's spouse, parent or child, or by a former spouse pursuant to a decree of dissolution of marriage, is entitled to a credit to be applied to the registration fee for the transferred vehicle. A credit shall not be allowed unless the vehicle to which the credit applies is registered within the time specified under subsection 1. The credit shall be computed on the basis of the number of unexpired months remaining in the registration year of the former owner computed from the date the vehicle was transferred, computed to the nearest whole dollar. The credit may exceed the amount of the registration fee for the transferred vehicle. When the amount of the credit is computed to be an amount of less than ten dollars, the credit shall be disallowed. The credit shall not be sold, transferred, or assigned to any other person.

7. If a motor vehicle is leased and the lessee purchases the vehicle upon termination of the lease, the lessor shall, upon claim by the lessee with the lessor within fifteen days of the purchase, assign the registration fee credit and registration plates for the leased motor vehicle to the lessee. Credit shall be applied as provided in subsection 3.

2001 Acts, ch 153, §17, 18
Surcharge imposed; §321.52A
For applicable scheduled fines, see §805.8A, subsection 2, paragraph c
Terminology change applied

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 manufactured or 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 reproduction of 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. A requirement of chapter 450 or 451 shall not 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 6.

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.

A person convicted of a violation of this section is guilty of a simple misdemeanor punishable as a scheduled violation under section 805.8A, subsection 2, paragraph “b”.

2000 Acts, ch 1149, §165, 187; 2001 Acts, ch 137, §5; 2001 Acts, ch 153, §15; 2001 Acts, ch 176, §80

Surcharge imposed; §321.52A

2000 amendments to unnumbered paragraph 2 are effective July 1, 2001; 2000 Acts, ch 1149, §187

Internal reference change applied

Terminology change applied

Unnumbered paragraph 2 amended

321.48 Vehicles acquired for resale.

1. When the transferee of a vehicle is a dealer who holds the vehicle for resale and operates the vehicle only for purposes incident to a resale and displays a dealer plate on the vehicle or does not drive such vehicle or permit it to be driven upon the highways, such transferee shall not be required to obtain a new registration or a new certificate of title but upon transferring title or interest to another person shall execute and acknowledge an assignment and warranty of title upon the certificate of title assigned to the person and deliver the same to the person to whom such transfer is made.

A dealer licensed pursuant to chapter 322 or chapter 322C who has acquired a vehicle for resale which is subject to a security interest as provided in section 321.50 and who has forwarded to the secured party the sum necessary to discharge the security interest may offer the vehicle for sale prior to the receipt from the county treasurer of the certificate of title for the vehicle with the lien discharged for a period of not more than thirty days from the date the vehicle was acquired and the provisions of section 321.104, subsection 2, shall not apply.

2. A foreign registered vehicle purchased or otherwise acquired by a dealer for the purpose of resale shall be issued a certificate of title for the vehicle by the county treasurer of the dealer's residence upon proper application as provided in this chapter and upon payment of a fee of five dollars and the dealer is exempt from the payment of any and all registration fees for the vehicle. The application for certificate of title shall be made within fifteen days after the vehicle comes within the border of the state. However, a dealer acquiring a vehicle registered in another state which permits Iowa dealers to reassign that state's certificates of title shall not be required to obtain a new registration or a new certificate of title and upon transferring title or interest to another person shall execute an assignment upon the certificate of title for the vehicle to the person to whom the transfer is made and deliver the assigned certificate of title to the person.

3. In a transaction in which a vehicle is traded to a dealer as defined in chapter 322 or chapter 322C toward the purchase price of another vehicle

and each vehicle is owned in whole or in part by the same person, the person acquiring the vehicle from the dealer shall be entitled to a credit under section 321.46.

4. Nothing in this section shall be construed to prohibit a dealer from obtaining a new certificate of title or new registration in the same manner as other purchasers.

Surcharge imposed; §321.52A

For applicable scheduled fines, see §805.8A, subsection 2, paragraph c
Section not amended; footnote added

321.49 Time limit — penalty — power of attorney.

1. Except as provided in section 321.52, if an application for transfer of registration and certificate of title is not submitted to the county treasurer of the residence of the transferee within thirty days of the date of assignment or transfer of title, or within thirty days of the date of delivery to the purchaser if the vehicle is subject to a security interest and was offered for sale pursuant to section 321.48, subsection 1, a penalty of ten dollars shall accrue against the applicant, and no registration card or certificate of title shall be issued to the applicant for the vehicle until the penalty is paid.

2. Certificates of title to vehicles may be assigned by an attorney in fact of the owner under a power of attorney appointed and so empowered on forms provided by the department. Such power of attorney shall be filed by the transferee with the application for title.

3. A manufactured home retailer who acquires a used mobile home or manufactured home, titled in Iowa, and who does not apply for and obtain a certificate of title from the county treasurer of the manufactured home retailer's county of residence within thirty days of the date of acquisition, as required under section 321.45, subsection 4, is subject to a penalty of ten dollars. A certificate of title shall not be issued to the manufactured home retailer until the penalty is paid.

2001 Acts, ch 153, §17, 18
Terminology change applied

321.50 Security interest provisions.

1. A security interest in a vehicle subject to registration under the laws of this state or a mobile home or manufactured home, except trailers whose empty weight is two thousand pounds or less, and except new or used vehicles held by a dealer or manufacturer as inventory for sale, is perfected by the delivery to the county treasurer of the county where the certificate of title was issued or, in the case of a new certificate, to the county treasurer where the certificate will be issued, of an application for certificate of title which lists the security interest, or an application for notation of security interest signed by the owner, or by one owner of a vehicle owned jointly by more than one person, or a certificate of title from another jurisdiction which shows the security interest, and a fee of five dollars for each security interest

shown. Up to three security interests may be perfected against a vehicle and shown on an Iowa certificate of title. If the owner or secured party is in possession of the certificate of title, it must also be delivered at this time in order to perfect the security interest. If a vehicle is subject to a security interest when brought into this state, the validity of the security interest and the date of perfection is determined by section 554.9303. Delivery as provided in this subsection is an indication of a security interest on a certificate of title for purposes of chapter 554.

2. Upon receipt of the application and the required fee, the county treasurer shall notify the holder of the certificate of title to deliver to the county treasurer, within five days from the receipt of notice, the certificate of title to permit notation of the security interest. If the holder of the certificate of title shall fail to deliver it within the said five days, the holder shall be liable to anyone harmed by the holder's failure.

3. Upon receipt of the application, the certificate of title, if any, and the required fee, the county treasurer shall note such security interest, and the date thereof, on the certificate over the signature of such officer or deputy and the seal of office. The county treasurer shall also note such security interest and the date thereof in the county records system. The county treasurer shall then mail the certificate of title to the first secured party as shown thereon.

4. When a security interest is discharged, the holder shall note a cancellation of same on the face of the certificate of title over the holder's signature, and deliver the certificate of title to the county treasurer where title was issued. The county treasurer shall immediately note the cancellation of the security interest on the face of the certificate of title and in the county records system. The county treasurer shall on the same day deliver the certificate of title to the then first secured party or, if there is no such person, to the person as directed by the owner, in writing, on a form prescribed by the department or, if there is no person designated, then to the owner. The cancellation of the security interest shall be noted on the certificate of title by the county treasurer without charge. The holder of a security interest discharged by payment who fails to release the security interest within fifteen days after being requested in writing to do so shall forfeit to the person making the payment the sum of twenty-five dollars.

If a lien has been released by the lienholder but has not been sent to the county of record for clearance of the lien, any county may note the release on the face of the title and shall notify the county of record that the lien has been released as of the specified date, and shall make entry upon the computer system. Notification to the county of record shall be made by an automated statewide system, or by sending a photocopy of the released title to

the county of record.

When a security interest is discharged, the lienholder shall note the cancellation of the security interest on the face of the title and may note the cancellation of the security interest on a form prescribed by the department and deliver a copy of the form in lieu of the title to the department or to the treasurer of the county in which the title was issued. The department or county treasurer shall note the release of the security interest upon the statewide computer system and the county's records. A copy of the form, if used, shall be attached to the title by the lienholder and shall be evidence of the release of the security interest. The lienholder shall deliver the title to the first lienholder, or if there is no such person, to the person as designated by the owner, or if there is no such person designated, to the owner.

5. The Uniform Commercial Code, chapter 554, Article 9, shall apply to all transactions intended to create a security interest in vehicles except as provided in this chapter.

6. Any person obtaining possession of a certificate of title for a vehicle not already subject to a perfected security interest, except new or used vehicles held by a dealer or manufacturer as inventory for sale, who purports to have a security interest in such vehicle shall, within thirty days from the receipt of the certificate of title, deliver such certificate of title to the county treasurer of the county where it was issued to note such security interest and, if such person fails to do so, the person's purported security interest in the vehicle shall be void and unenforceable and such person shall forthwith deliver the certificate of title to the county treasurer of the county where it was issued. If no security interest has been filed for notation on the certificate of title, the certificate shall be mailed by the treasurer to the owner of the vehicle. For purposes of determining the commencement date of the thirty-day period provided by this subsection, it shall be presumed that the purported security interest holder received the certificate of title on the date of the creation of the holder's purported security interest in the vehicle or the date of the issuance of the certificate of title, whichever is the latter. Any person collecting a fee from the owner of the vehicle for the purpose of perfecting a security interest in such vehicle who does not cause such security interest to be noted on the certificate of title by the county treasurer shall remit such fee to the department of revenue and finance of this state.

7. Upon request of any person, the county treasurer shall issue a certificate showing whether there are, on the date and hour stated therein, any security interests noted on a particular vehicle's certificate of title, and the name and address of each secured party whose security interest is noted thereon. The uniform fee for a written certificate shall be two dollars if the request for the certificate is on a form conforming to standards pre-

scribed by the secretary of state; otherwise, three dollars. Upon request and payment of the appropriate fee, the county treasurer shall furnish a certified copy of any security interest notations for a uniform fee of one dollar per page.

2000 Acts, ch 1016, §44, 47; 2000 Acts, ch 1149, §166, 187; 2001 Acts, ch 153, §17

Surcharge imposed; §321.52A

2000 amendments to subsection 1 take effect July 1, 2001; 2000 Acts, ch 1016, §44; 2000 Acts, ch 1149, §187

See Code editor's note to §12.65

Subsection 1 amended

321.52 Out-of-state sales — junked, dismantled, wrecked, or salvage vehicles.

1. When a vehicle is sold outside the state for purposes other than for junk the owner, dealer or otherwise, shall detach the registration plates and registration card and shall indicate on the reverse side of such registration card the name and address of the foreign purchaser or transferee over the person's signature. The owner shall surrender the registration plates and registration card to the county treasurer, unless the registration plates are properly attached to another vehicle, who shall cancel the records and shall destroy the registration plates and forward the registration card to the department. The department shall make a notation on the records of the out-of-state sale, and, after a reasonable period, may destroy the files to that particular vehicle. The department is not authorized to make a refund of license fees on a vehicle sold out of state unless it receives the registration card completed as provided in this section.

2. The purchaser or transferee of a motor vehicle for which a certificate of title is issued which is sold for scrap or junk shall surrender the certificate of title, properly endorsed and signed by the previous owner, to the county treasurer of the county of residence of the transferee, and shall apply for a junking certificate from the county treasurer, within thirty 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. The junking certificate shall be printed on the registration receipt form and shall be imprinted with the words "junking certificate", as prescribed by the department. A space for transfer by endorsement shall be on the reverse side of the junking certificate. A separate form for the notation of the transfer of component parts shall be attached to the junking certificate when the certificate is issued.

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 and application for junking certificate, 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, application for junking certificate, 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 thirty 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 pay-

ment 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 thirty 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 en-

forcement 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 state department of transportation shall adopt rules in accordance with chapter 17A to carry out this section.

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.

Surcharge imposed; §321.52A

For applicable scheduled fine, see §805.8A, subsection 2, paragraph c
Section not amended; footnote added

321.52A Certificate of title surcharge — allocation of moneys.

1. 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 as set forth in subsection 2.

2. For the fiscal year beginning July 1, 1996, the treasurer of state shall deposit one million five hundred thousand dollars of moneys received under subsection 1 in the waste tire management fund created in section 455D.11C, and deposit the remainder in the general fund of the state. For the fiscal year beginning July 1, 1997, the treasurer of state shall deposit two million five hundred thousand dollars of moneys received under subsection 1 in the waste tire management fund, and deposit the remainder in the general fund of the state. For the fiscal year beginning July 1, 1998, and the fiscal year beginning July 1, 1999, the treasurer of state shall deposit three million five hundred thousand dollars of moneys received under subsection 1 in the waste tire management fund, and deposit the remainder in the general fund of the state. For the fiscal year beginning July 1, 2000, the treasurer of state shall deposit two million five hundred thousand dollars of the moneys received under subsection 1 in the waste tire management fund, and one million dollars in the road use tax fund, with the remainder deposited in the general fund of the state. For the fiscal year beginning July 1, 2001, the treasurer of state shall deposit one million five hundred thousand dollars of moneys received under subsection 1 in the waste tire management fund, with the remainder deposited in the general fund of the state. For the fiscal year beginning July 1, 2002, and each subsequent fiscal year, the treasurer of state shall deposit the entire amount of moneys received under subsection 1 in the road use tax fund.

2001 Acts, ch 188, §25
Subsection 2 amended

321.54 Registration and financial liability coverage required of certain nonresident carriers.

1. Nonresident owners of foreign vehicles operated within this state for the intrastate transportation of persons or property for compensation or for the intrastate transportation of merchandise shall register and maintain financial liability coverage as required under section 321.20B for each vehicle and pay the same fees required for like vehicles owned by residents of this state.

2. The term “*intrastate transportation*” as used herein shall mean the transportation for compensation of persons or property originating at any point or place in the state of Iowa and destined to any other point or place in said state irre-

spective of the route or highway or highways traversed, including the crossing of any state line of the state of Iowa, or the ticket or bill of lading issued and used for such transportation.

For applicable scheduled fines, see §805.8A, subsection 13, paragraph a
Unnumbered paragraphs 1 and 2 editorially designated as subsections 1 and 2

Section not amended; footnote added

321.55 Registration and financial liability coverage required for certain vehicles owned or operated by nonresidents.

1. A nonresident owner or operator engaged in remunerative employment within the state or carrying on business within the state and owning or operating a motor vehicle, trailer, or semitrailer within the state shall register and maintain financial liability coverage as required under section 321.20B for each vehicle and pay the same fees for registration as are paid for like vehicles owned by residents of this state. However, this paragraph does not apply to a person commuting from the person’s residence in another state or whose employment is seasonal or temporary, not exceeding ninety days.

2. A nonresident owner of a motor vehicle operated within the state by a resident of the state shall register the vehicle and shall maintain financial liability coverage as required under section 321.20B for the vehicle. The nonresident owner shall pay the same fees for registration as are paid for like vehicles owned by residents of this state. However, registration under this paragraph is not required for vehicles being operated by residents temporarily, not exceeding ninety days. It is unlawful for a resident to operate within the state an unregistered motor vehicle required to be registered under this paragraph.

For applicable scheduled fine, see §805.8A, subsection 2, paragraph b
Unnumbered paragraphs 1 and 2 editorially designated as subsections 1 and 2

Section not amended; footnote added

321.56 Repair of out-of-state commercial motor vehicles — permits.

1. The operator of a commercial motor vehicle which is not registered within the state as required pursuant to this chapter or chapter 326 or which does not have an interstate fuel permit, as required under chapter 452A, may enter the state and travel to a commercial vehicle dealer or repair facility and exit the state under the following circumstances:

a. If the commercial motor vehicle is entering the state solely for the purposes of maintenance and repair to the commercial motor vehicle and is exiting the state after having completed vehicle maintenance or repair.

b. If the operator has obtained a temporary entry or exit permit from the department.

c. If the commercial motor vehicle is unladen.

2. The department shall provide a temporary entry and exit permit to a commercial motor vehicle operator which authorizes the operator to en-

ter and exit the state as allowed under this section. Any operator of a commercial motor vehicle who has in the operator's possession the permit allowing entry into the state and exit from the state shall not be charged with a registration violation under this chapter or chapter 326 or with a motor vehicle fuel tax violation under chapter 452A, except for violations of section 452A.74A.

3. For purposes of this section "*commercial motor vehicle*" means as defined in section 321.1, subsection 11, paragraph "e", subparagraph (2).

2001 Acts, ch 132, §3
NEW section

321.57 Operation under special plates.

1. A manufactured home retailer* owning any vehicle of a type otherwise required to be registered under this chapter may operate or move the vehicle upon the highways solely for purposes of transporting, testing, demonstrating, or selling the vehicle without registering the vehicle, upon condition that the vehicle display in the manner prescribed in sections 321.37 and 321.38 a special plate issued to the owner as provided in sections 321.58 to 321.62. Additionally, a new car dealer or a used car dealer may operate or move upon the highways a new or used car or trailer owned by the dealer for either private or business purposes without registering it if the new or used car or trailer is in the dealer's inventory and is continuously offered for sale at retail, and there is displayed on it a special plate issued to the dealer as provided in sections 321.58 to 321.62.

2. In addition, while a service customer is having the customer's own vehicle serviced or repaired by the manufactured home retailer,* the service customer of the manufactured home retailer* may operate upon the highways a motor vehicle owned by the manufactured home retailer,* except a motor truck or truck tractor, upon which there is displayed a special plate issued to the manufactured home retailer,* provided all of the requirements of this section are complied with.

3. Also a transporter may operate or move any vehicle of like type upon the highways solely for the purpose of delivery upon likewise displaying thereon like plates issued to the transporter as provided in these sections.

4. The provisions of this section and sections 321.58 to 321.62, shall not apply to any vehicles offered for hire, work or service vehicles owned by a transporter or manufactured home retailer.*

5. Manufactured home retailers licensed under chapter 322B may transport and deliver mobile homes or manufactured homes in their inventory upon the highways of this state with a special plate displayed on the mobile home or manufactured home as provided in sections 321.58 to 321.62.

6. A dealer licensed as a wholesaler for a new motor vehicle model under chapter 322 may operate a new motor vehicle of that model, owned by

the wholesaler, upon the highway when there is displayed on the vehicle a special plate issued to the wholesaler as provided in sections 321.58 through 321.62 and when operated solely for the purposes of demonstration, show, or exhibition.

2001 Acts, ch 153, §17, 18
For applicable scheduled fine, see §805.8A, subsection 2, paragraph c
*Terminology change from "dealer" to "manufactured home retailer" probably not intended; corrective legislation is pending
Terminology change applied
Unnumbered paragraphs 1 - 6 editorially designated as subsections 1 - 6

321.58 Application.

All manufactured home retailers,* transporters, new motor vehicle wholesalers licensed under chapter 322, and manufactured home retailers licensed under chapter 322B, upon payment of a fee of seventy dollars for two years, one hundred forty dollars for four years, or two hundred ten dollars for six years, may make application to the department upon the appropriate form for a certificate containing a general distinguishing number and for one or more special plates as appropriate to various types of vehicles subject to registration. The applicant shall also submit proof of the applicant's status as a bona fide transporter, new motor vehicle wholesaler licensed under chapter 322, manufactured home retailer licensed under chapter 322B, or manufactured home retailer,* as reasonably required by the department. Dealers in new vehicles shall furnish satisfactory evidence of a valid franchise with the manufacturer of the vehicles authorizing the dealership.

2001 Acts, ch 153, §18
*Terminology change from "dealer" to "manufactured home retailer" probably not intended; corrective legislation is pending
Terminology change applied

321.62 Records required.

Every transporter or dealer shall keep a written record of the vehicles upon which such special plates are used, which record shall be open to inspection by any police officer or any officer or employee of the department.

For applicable scheduled fine, see §805.8A, subsection 2, paragraph c
Section not amended; footnote added

321.67 Certificate of title must be executed.

1. No person, except as provided in sections 321.23 and 321.45 shall sell or otherwise dispose of a registered vehicle or a vehicle subject to registration without delivering to the purchaser or transferee thereof a certificate of title with such assignment thereon as may be necessary to show title in the purchaser.

2. No person shall purchase or otherwise acquire or bring into this state a registered vehicle or a vehicle subject to registration without obtaining a certificate of title thereto except for temporary use or as provided in sections 321.23 and 321.45.

For applicable scheduled fine, see §805.8A, subsection 2, paragraph c
Section not amended; footnote added

321.71A Nonoperative air bags.

A person shall not install or reinstall for compensation, distribute, or sell a nonoperative air bag that is part of an inflatable restraint system for a motor vehicle if the person knows that the air bag is nonoperative. A violation of this section is an aggravated misdemeanor punishable by confinement for up to one year and a fine of at least five hundred dollars but not more than five thousand dollars.

For purposes of this section, “*nonoperative air bag*” includes an air bag that has been previously deployed, is nonfunctional, or is otherwise defective. “*Nonoperative air bag*” also includes anything that is inserted, or is intended to be inserted, in place of an air bag, which would prohibit an inflatable restraint system from functioning properly.

2001 Acts, ch 94, §1
NEW section

321.91 Limitation on liability — penalty for abandonment.

1. No person, firm, corporation, unit of government, garagekeeper or police authority upon whose property an abandoned vehicle is found or who disposes of such abandoned vehicle in accordance with sections 321.89 and 321.90 shall be liable for damages by reason of the removal, sale, or disposal of such vehicle.

2. A person convicted of a violation of this section is guilty of a simple misdemeanor punishable as a scheduled violation under section 805.8A, subsection 14, paragraph “b”.

2001 Acts, ch 137, §5
Internal reference change applied

321.98 Operation without registration.

A person shall not operate, and an owner shall not knowingly permit to be operated upon any highway any vehicle required to be registered and titled hereunder unless there shall be attached thereto and displayed thereon when and as required by this chapter a valid registration card and registration plate or plates issued therefor for the current registration year and unless a certificate of title has been issued for such vehicle except as otherwise expressly permitted in this chapter. Any violation of this section is a simple misdemeanor punishable as a scheduled violation under section 805.8A, subsection 2, paragraph “b”.

2001 Acts, ch 176, §50, 59
Section amended

321.99 Fraudulent use of registration.

A person shall not knowingly lend to another a registration card, registration plate, special plate, or permit issued to the person if the other person desiring to borrow the card, plate, or permit would not be entitled to the use of it. A person shall not knowingly permit the use of a registration card, registration plate, special plate, or permit issued

to the person by one not entitled to it, nor shall a person knowingly display upon a vehicle a registration card, registration plate, special plate, or permit not issued for that vehicle under this chapter. A person convicted of a violation of this section is guilty of a simple misdemeanor punishable as a scheduled violation under section 805.8A, subsection 2, paragraph “d”.

2001 Acts, ch 137, §5
Internal reference change applied

321.101 Suspension or revocation of registration or cancellation of certificate of title by department.

1. The department is hereby authorized to suspend or revoke the registration of a vehicle, registration card, registration plate, or any non-resident or other permit in any of the following events:

a. When the department is satisfied that such registration card, plate, or permit was fraudulently or erroneously issued.

b. When the department determines that a registered vehicle is mechanically unfit or unsafe to be operated or moved upon the highways.

c. When a registered vehicle has been dismantled or wrecked.

d. When the department determines that the required fee has not been paid and the fee is not paid upon reasonable notice and demand.

e. When a registration card, registration plate, or permit is knowingly displayed upon a vehicle other than the one for which issued.

f. 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.

g. When the department is so authorized under any other provision of law.

h. 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.

2. 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 or manufactured 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 or manufactured home for which 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 on the certificate of title, of the cancellation and shall demand the surrender of the certificate of title, but the cancellation shall not affect the valid-

ity of any lien noted on the certificate of title.

3. 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 the notice to the person to be so notified or by certified mail addressed to the person at the person's address as shown on the registration record. A return acknowledgment is not necessary to prove such latter service.

If a vehicle, for which the registration has been suspended or revoked pursuant to subsection 1, paragraph "d", or section 321.101A, 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.

2001 Acts, ch 153, §17
Terminology change applied

321.104 Penal offenses against title law.

It is a simple misdemeanor punishable as a scheduled violation under section 805.8A, subsection 2, paragraph "c", for any person to commit any of the following acts:

1. To operate any motor vehicle upon the highways upon which the certificate of title has been canceled, or while a certificate of registration of a motor vehicle is suspended or revoked.

2. For a dealer, or a person acting on behalf of a dealer to acquire, purchase, hold or display for sale a motor vehicle without having obtained a manufacturer's or importer's certificate or a certificate of title, or assignments thereof, unless otherwise provided in this chapter.

3. To fail to surrender a certificate of title, registration card, or registration plates upon cancellation, suspension, or revocation of the certificate or registration by the department and notice as prescribed in this chapter.

4. To sell, offer for sale, or transfer a motor vehicle, trailer, or semitrailer, except as provided in section 321.47 or 321.48, without obtaining a certificate of title in the name of the seller or transferor or without delivering to the purchaser or transferee a certificate of title or a manufacturer's or importer's certificate duly assigned to the purchaser or transferee as provided in this chapter.

5. To violate any of the other provisions of this chapter or any lawful rules adopted pursuant to this chapter.

6. For a dealer to sell or transfer a mobile home or manufactured home without delivering to the purchaser or transferee a certificate of title or a manufacturer's or importer's certificate properly assigned to the purchaser, or to transfer a mobile home or manufactured home without disclosing to the purchaser the owner of the mobile home or

manufactured home in a manner prescribed by the department pursuant to rules, or to fail to certify within seven days to the proper county treasurer the information required under section 321.45, subsection 4, or to fail to apply for and obtain a certificate of title for a used mobile home or manufactured home, titled in Iowa, acquired by the dealer within thirty days from the date of acquisition as required under section 321.45, subsection 4.

2001 Acts, ch 137, §5; 2001 Acts, ch 153, §17
Terminology change applied
Internal reference change applied

321.106 Registration for fractional part of year.

1. When a vehicle is registered under chapter 326 or a motor truck, truck tractor, or road tractor is registered for a combined gross weight exceeding five tons and there is no delinquency and the registration is made in February or succeeding months through November, the registration fee shall be prorated for the remaining unexpired months of the registration year. A fee shall not be required for the month of December for a vehicle registered on a calendar year basis on which there is no delinquency. However, except for a vehicle registered under chapter 326, when such a vehicle is registered in November, the vehicle may be registered for the remaining unexpired months of the registration year or for the remaining unexpired months of the registration year and for the next registration year, upon payment of the applicable registration fees.

2. When a vehicle is registered on a birth month basis and there is no delinquency and the registration is made in the month after the beginning of the registration year or succeeding months, the registration fee shall be prorated for the remaining unexpired months of the registration year. A fee shall not be required for the month of the owner's birthday for a vehicle on which there is no delinquency. However, when a vehicle registered on a birth month basis is registered during the eleventh month of the registration year, the vehicle may be registered for the remaining unexpired months of the registration year or for the remaining unexpired months of the registration year and for the next registration year, upon payment of the applicable registration fees.

3. If a fee computed under this section contains a fractional part of a dollar, the fee shall be computed to the nearest whole dollar. A fee computed under this section shall not be less than five dollars. The fee so computed shall be deemed to be the annual registration fee for the remainder of the registration year.

4. A reduction in the registration fee shall not be allowed by the department until the applicant files satisfactory evidence to prove that there is no delinquency in registration.

2000 Acts, ch 1028, §3, 4
2000 amendments are effective July 1, 2001; 2000 Acts, ch 1028, §4
Section amended

321.113 Automatic reduction.

1. The registration fee for a motor vehicle shall not be automatically reduced under this section unless the registration fee is based on the value and weight of the motor vehicle as provided in section 321.109, subsection 1.

2. If a motor vehicle is more than five model years old, the part of the registration fee that is based on the value of the vehicle shall be seventy-five percent of the rate as fixed when the motor vehicle was new.

3. If a motor vehicle is more than six model years old, the part of the registration fee that is based on the value of the vehicle shall be fifty percent of the rate as fixed when the motor vehicle was new.

4. If a 1994 model year or newer motor vehicle is nine model years old or older the registration fee is thirty-five dollars. For purposes of determining the portion of the registration fee under this subsection that is based upon the value of the motor vehicle, sixty percent of the registration fee is attributable to the value of the vehicle.

5. a. If a 1993 model year or older motor vehicle has been titled in the same person's name since the vehicle was new or the title to the vehicle was transferred prior to January 1, 2002, the part of the registration fee that is based on the value of the vehicle shall be ten percent of the rate as fixed when the motor vehicle was new.

b. If the title of a 1993 model year or older motor vehicle is transferred to a new owner or if such a motor vehicle is brought into the state on or after January 1, 2002, the registration fee shall not be based on the weight and list price of the motor vehicle, but shall be as follows:

(1) For a motor vehicle that is model year 1969 or older:

..... \$ 16.00

(2) For a motor vehicle that is model year 1970 through 1989:

..... \$ 23.00

(3) For a motor vehicle that is model year 1990 through 1993:

..... \$ 27.00

For purposes of determining the portion of the registration fee under this paragraph "b" that is based upon the value of the motor vehicle, sixty percent of the registration fee is attributable to the value of the vehicle.

2001 Acts, ch 132, §4, 24; 2001 Acts, ch 176, §65
2001 amendments take effect January 1, 2002; 2001 Acts, ch 132, §24
Section amended

321.115 Antique vehicles — model year plates permitted.

1. A motor vehicle twenty-five years old or older, whose owner desires to use the motor vehicle exclusively for exhibition or educational purposes at state or county fairs, or other places where the motor vehicle may be exhibited for entertainment or educational purposes, shall be given a registra-

tion for a registration fee of five dollars per annum permitting the driving of the motor vehicle upon the public roads to and from state and county fairs or other places of entertainment or education for exhibition or educational purposes and to and from service stations for the purpose of receiving necessary maintenance.

2. The sale of a motor vehicle twenty years old or older which is primarily of value as a collector's item and not as transportation is not subject to chapter 322 and any person may sell such a vehicle at retail or wholesale without a license as required under chapter 322.

3. The owner of a motor vehicle which is registered under subsection 1, may display a registration plate from or representing the model year of the motor vehicle, furnished by the person, in lieu of a current and valid Iowa registration plate issued to the vehicle, provided that any replaced current and valid Iowa registration plate and the registration card issued to the vehicle are simultaneously carried within the vehicle and are available for inspection to any peace officer upon the officer's request.

4. Truck tractors and semitrailers used in combination for exhibition and educational purposes as described in subsection 1 may be registered, exhibited, and driven according to the provisions of subsection 1. Subsection 3 shall not apply to vehicles registered in accordance with this subsection.

5. A person convicted of a violation of this section is guilty of a simple misdemeanor punishable as a scheduled violation under section 805.8A, subsection 2, paragraph "b".

2001 Acts, ch 137, §5
Internal reference change applied

321.123 Trailers.

All trailers except farm trailers, mobile homes, and manufactured homes, unless otherwise provided in this section, are subject to a registration fee of ten dollars. 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, shall be subject to 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 manufactured or mobile home tax assessed under chapter 435.

2. 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.

2001 Acts, ch 153, §15, 17; 2001 Acts, ch 176, §80
Terminology changes applied

321.157 Schedule of prices and weights.

1. A manufacturer or importer of a motor vehicle sold or offered for sale in this state, either by the manufacturer, importer, distributor, dealer, or any other person, shall file in the office of the department a sworn statement showing the various models manufactured by the manufacturer, importer, distributor, dealer, or other person, and the retail list price and weight of each model concurrently with a public announcement of such prices or concurrently with notification of such prices to dealers licensed to sell such motor vehicles under chapter 322, whichever comes first. The manufacturer, importer, distributor, dealer, or other person shall also make the same report on subsequent new models manufactured.

2. In lieu of filing the sworn statement required under subsection 1, a manufacturer or importer of a motor vehicle sold or offered for sale in this state may electronically provide the information required in subsection 1 to the department, or, if the manufacturer or importer provides the required information to a third-party vendor, the manufacturer or importer shall make the required information available to the department through

the third-party vendor.

2000 Acts, ch 1016, §45, 47
2000 amendments are effective July 1, 2001; 2000 Acts, ch 1016, §47
Section amended

321.159 Exceptional cases.

The department shall have the power to fix the registration fee on all makes and models of motor vehicles which are not now being furnished or upon which the statement from the factory cannot be obtained.

For a current year model of a motor vehicle for which the manufacturer or importer of the motor vehicle has not provided the weight and list price, the department shall set the annual registration fee at ten dollars greater than the annual registration fee for the previous year model. Once the manufacturer or importer provides the required information, the information shall be used to set the registration or registration renewal fee for the succeeding registration or registration renewal time for the motor vehicle.

2000 Acts, ch 1016, §46, 47
2000 amendment effective July 1, 2001; 2000 Acts, ch 1016, §47
NEW unnumbered paragraph 2

321.174 Operators licensed — operation of commercial motor vehicles.

1. A person, except those expressly exempted, shall not operate any motor vehicle upon a highway in this state unless the person has a driver's license issued by the department valid for the vehicle's operation.

2. A person operating a commercial motor vehicle shall not have more than one driver's license. A nonresident may operate a commercial motor vehicle in Iowa if the nonresident has been issued a license by another state, a nonresident commercial driver's license, or a driver's license issued by a foreign jurisdiction which the federal highway administration has determined to be issued in conformity with the federal commercial driver testing and licensing standards, if the license, commercial driver's license, or driver's license is valid for the vehicle operated. A person who operates a commercial motor vehicle upon the highways of this state without having been issued a driver's license valid for the vehicle operated commits a simple misdemeanor.

3. A licensee shall have the licensee's driver's license in immediate possession at all times when operating a motor vehicle and shall display the same, upon demand of a judicial magistrate, district associate judge, district judge, peace officer, or examiner of the department. However, a person charged with violating this subsection shall not be convicted if the person produces in court, within a reasonable time, a driver's license issued to that person and valid for the vehicle operated at the time of the person's arrest or at the time the person was charged with a violation of this section.

For applicable scheduled fines, see §805.8A, subsection 4, paragraph 8
Section not amended; footnote added

321.174A Operation of motor vehicle with expired license.

A person shall not operate a motor vehicle upon a highway in this state with an expired driver's license.

For applicable scheduled fine, see §805.8A, subsection 4, paragraph a
Section not amended; footnote added

321.177 Persons not to be licensed.

The department shall not issue a driver's license:

1. To any person who is under the age of eighteen years except as provided in section 321.180B. However, the department may issue a driver's license to certain minors as provided in section 321.178 or 321.194, or a driver's license restricted to motorized bicycles as provided in section 321.189.

2. To any person holding any other driver's license.

3. To any person whose driver's 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.

For provisions establishing a driver's license indebtedness clearance pilot project effective May 19, 1997, see 97 Acts, ch 153, §2, 4
Section not amended; footnote added

321.178 Driver education — restricted license — reciprocity.

1. *Approved course.* An approved driver education course as programmed by the department of education shall consist of at least thirty clock hours of classroom instruction, of which no more than one hundred eighty minutes shall be provided to a student in a single day, and six or more clock hours of laboratory instruction of which at least three clock hours shall consist of street or highway driving. Classroom instruction shall include all of the following:

a. A minimum of four hours of instruction concerning substance abuse.

b. A minimum of twenty minutes of instruction concerning railroad crossing safety.

c. Instruction relating to becoming an organ donor under the uniform anatomical gift Act.

To be qualified as a classroom driver education instructor, a person shall have satisfied the educational requirements for a teaching license at the elementary or secondary level and hold a valid license to teach driver education in the public schools of this state.

Every public school district in Iowa shall offer or make available to all students residing in the school district or Iowa students attending a nonpublic school in the district an approved course in driver education. The courses may be offered at sites other than at the public school, including nonpublic school facilities within the public school districts. An approved course offered during the summer months, on Saturdays, after regular school hours during the regular terms or partly in one term or summer vacation period and partly in the succeeding term or summer vacation period, as the case may be, shall satisfy the requirements of this section to the same extent as an approved course offered during the regular school hours of the school term. A student who successfully completes and obtains certification in an approved course in driver education or an approved course in motorcycle education may, upon proof of such fact, be excused from any field test which the student would otherwise be required to take in demonstrating the student's ability to operate a motor vehicle. A student shall not be excused from any field test if a parent, guardian, or instructor requests that a test be administered. Street or highway driving instruction may be provided by a person qualified as a classroom driver education instructor or a person certified by the department of transportation and authorized by the board of educational examiners. A person shall not be required to hold a current Iowa teacher or administrator license at the elementary or secondary level or to have satisfied the educational requirements for an Iowa teacher license at the elementary or secondary level in order to be certified by the department of transportation or authorized by the board of educational examiners to provide street

or highway driving instruction. A final field test prior to a student's completion of an approved course shall be administered by a person qualified as a classroom driver education instructor. The department of transportation shall adopt rules pursuant to chapter 17A to provide for certification of persons qualified to provide street or highway driving instruction. The board of educational examiners shall adopt rules pursuant to chapter 17A to provide for authorization of persons certified by the department of transportation to provide street or highway driving instruction.

"Student", for purposes of this section, means a person between the ages of fourteen years and twenty-one years who resides in the public school district and who satisfies the preliminary licensing requirements of the department of transportation.

Any person who successfully completes an approved driver education course at a private or commercial driver education school licensed by the department of transportation, shall likewise be eligible for a driver's license as provided in section 321.180B or 321.194.

2. *Restricted license.*

a. A person between sixteen and eighteen years of age who is not in attendance at school or who is in attendance in a public or private school where an approved driver's education course is not offered or available, may be issued a restricted license only for travel to and from work or to transport dependents to and from temporary care facilities, if necessary for the person to maintain the person's present employment, without having completed an approved driver's education course. The restricted license shall be issued by the department only upon confirmation of the person's employment and need for a restricted license to travel to and from work or to transport dependents to and from temporary care facilities if necessary to maintain the person's employment and upon receipt of a written statement from the public or private school that an approved course in driver's education was not offered or available to the person, if applicable. The employer shall notify the department if the employment of the person is terminated before the person attains the age of eighteen. The person shall not have a restricted license revoked or suspended upon reentering school prior to age eighteen if the student enrolls in and completes the classroom portion of an approved driver's education course as soon as a course is available.

b. The department may suspend a restricted license issued under this section upon receiving a record of the person's conviction for one violation and shall revoke the license upon receiving a record of conviction for two or more violations of a law of this state or a city ordinance regulating the operation of motor vehicles on highways, other than parking violations as defined in section 321.210. After revoking a license under this section the de-

partment shall not grant an application for a new license or permit until the expiration of one year or until the person attains the age of eighteen whichever is the longer period.

3. *Driver's license reciprocity.*

a. The department may issue a class C or M driver's license to a person who is sixteen or seventeen years of age and who is a current resident of the state, but who has been driving as a resident of another state for at least one year prior to residency within the state.

b. The following criteria must be met prior to issuance of a driver's license pursuant to this subsection:

(1) The minor must reside with a parent or guardian.

(2) The minor must have driven under a valid driver's license for at least one year in the prior state of residence. Six months of the one year computation may include driving with an instruction permit.

(3) The minor must have had no moving traffic violations on the minor's driving record.

(4) The minor must pass the written and driving skills tests as required by the department, but is not required to have taken a driver's education class.

2001 Acts, ch 33, §1

Subsection 1, unnumbered paragraph 1 amended

321.180 Instruction permits.

1. a. A person who is at least eighteen years of age and who, except for the person's lack of instruction in operating a motor vehicle, would be qualified to obtain a driver's license, shall, upon meeting the requirements of section 321.186 other than a driving demonstration, and upon paying the required fee, be issued an instruction permit by the department. Subject to the limitations in this subsection, an instruction permit entitles the permittee, while having the permit in the permittee's immediate possession, to operate a motor vehicle, other than a commercial motor vehicle or as a chauffeur or a motor vehicle with a gross vehicle weight rating of sixteen thousand one or more pounds, upon the highways for a period not to exceed two years from the licensee's birthday anniversary in the year of issuance. If the applicant for an instruction permit holds a driver's license issued in this state valid for the operation of a motorized bicycle or a motorcycle, the instruction permit shall be valid for such operation without the need of an accompanying person.

A permittee shall not be penalized for failing to have the instruction permit in immediate possession if the permittee produces in court, within a reasonable time, an instruction permit issued to the permittee and valid at the time of the permittee's arrest or at the time the permittee was charged with failure to have the permit in the permittee's immediate possession.

b. Except as otherwise provided, a permittee

who is eighteen years of age or older must be accompanied by a person issued a driver's license valid for the vehicle operated who is a member of the permittee's immediate family if the family member is at least twenty-one years of age, an approved driver education instructor, a prospective driver education instructor who is enrolled in a practitioner preparation program with a safety education program approved by the state board of education, or a person at least twenty-five years of age, and who is actually occupying a seat beside the driver.

However, if the permittee is operating a motorcycle in accordance with this section or section 321.180B, the accompanying person must be within audible and visual communications distance from the permittee and be accompanying the permittee on or in a different motor vehicle. Only one permittee shall be under the immediate supervision of an accompanying qualified person.

2. A person who holds a class A, B, C, or D driver's license, upon meeting each of the following requirements, shall be eligible to apply for a commercial driver's instruction permit valid for the operation of a commercial motor vehicle when the permittee is accompanied by a person properly licensed to operate a commercial motor vehicle and actually occupying a seat beside the permittee. An applicant must be at least eighteen years of age and qualified to obtain a valid commercial driver's license including the requirements of section 321.188 other than the knowledge examination and driving skills tests. The commercial driver's instruction permit shall be valid for a period not to exceed six months. A commercial driver's instruction permit may be renewed only once in any two-year period. If the applicant for a commercial driver's instruction permit holds a driver's license issued in this state valid for the operation of a commercial or noncommercial vehicle, the commercial driver's instruction permit shall be valid for such operation without the need of an accompanying person.

3. A person, upon meeting each of the following requirements, shall be eligible to apply for a chauffeur's instruction permit valid for the operation of a motor vehicle, other than a commercial motor vehicle, as a chauffeur when the permittee is accompanied by a person, possessing a valid class D driver's license or commercial driver's license valid for the operation of the motor vehicle and the accompanying person is actually occupying a seat beside the permittee. An applicant must be at least eighteen years of age, otherwise qualified to obtain a class D driver's license, and must meet the requirements of section 321.186 other than a driving demonstration. The chauffeur's instruction permit shall be valid for a period not to exceed two years from the licensee's birthday anniversary in the year of issuance and shall be returned to the department upon issuance of a class

D driver's license or commercial driver's license. If the applicant for a chauffeur's instruction permit holds a driver's license issued under this chapter, the chauffeur's instruction permit shall be valid in the same manner as the driver's license would be for the operation of motor vehicles without the need of an accompanying person.

4. The instruction permit, chauffeur's instruction permit, and commercial driver's instruction permit are subject to suspension or revocation for the same reasons and in the same manner as suspension or revocation of a driver's license.

5. A motorcycle instruction permit issued under this section is not renewable.

For applicable scheduled violation and fine, see §805.8A, subsection 4, paragraph a

Section not amended; footnote added

321.180B Graduated driver's licenses for persons aged fourteen through seventeen.

Persons under age eighteen shall not be issued a license or permit to operate a motor vehicle except under the provisions of this section. However, the department may issue restricted and special driver's licenses to certain minors as provided in sections 321.178 and 321.194, and driver's licenses restricted to motorized bicycles as provided in section 321.189. A license or permit shall not be issued under this section or section 321.178 or 321.194 without the consent of a parent or guardian. An additional consent is required each time a license or permit is issued under this section or section 321.178 or 321.194. The consent must be signed by at least one parent or guardian on an affidavit form provided by the department.

1. *Instruction permit.* The department may issue an instruction permit to an applicant between the ages of fourteen and eighteen years if the applicant meets the requirements of sections 321.184 and 321.186, other than a driving demonstration, and pays the required fee. An instruction permit issued under this section shall be valid for a period not to exceed two years from the licensee's birthday anniversary in the year of issuance. A motorcycle instruction permit issued under this section is not renewable.

Subject to the limitations in this subsection, an instruction permit entitles the permittee, while having the permit in the permittee's immediate possession, to operate a motor vehicle other than a commercial motor vehicle or as a chauffeur or a motor vehicle with a gross vehicle weight rating of sixteen thousand one or more pounds upon the highways.

Except as otherwise provided, a permittee who is less than eighteen years of age and who is operating a motor vehicle must be accompanied by a person issued a driver's license valid for the vehicle operated who is the parent or guardian of the permittee, member of the permittee's immediate family if the family member is at least twenty-one years of age, an approved driver education

instructor, a prospective driver education instructor who is enrolled in a practitioner preparation program with a safety education program approved by the state board of education, or a person at least twenty-five years of age if written permission is granted by the parent or guardian, and who is actually occupying a seat beside the driver. A permittee shall not operate a motor vehicle if the number of passengers in the motor vehicle exceeds the number of passenger safety belts in the motor vehicle. If the applicant for an instruction permit holds a driver's license issued in this state valid for the operation of a motorized bicycle or a motorcycle, the instruction permit shall be valid for such operation without the requirement of an accompanying person.

However, if the permittee is operating a motorcycle in accordance with this section, the accompanying person must be within audible and visual communications distance from the permittee and be accompanying the permittee on or in a different motor vehicle. Only one permittee shall be under the immediate supervision of an accompanying qualified person.

A permittee shall not be penalized for failing to have the instruction permit in the permittee's immediate possession if the permittee produces in court, within a reasonable time, an instruction permit issued to the permittee and valid at the time of the permittee's arrest or at the time the permittee was charged with failure to have the permit in the permittee's immediate possession.

2. *Intermediate license.* The department may issue an intermediate driver's license to a person sixteen or seventeen years of age who possesses an instruction permit issued under subsection 1 or a comparable instruction permit issued by another state for a minimum of six months immediately preceding application, and who presents an affidavit signed by a parent or guardian on a form to be provided by the department that the permittee has accumulated a total of twenty hours of street or highway driving of which two hours were conducted after sunset and before sunrise and the street or highway driving was with the permittee's parent, guardian, instructor, a person certified by the department, or a person at least twenty-five years of age who had written permission from a parent or guardian to accompany the permittee, and whose driving privileges have not been suspended, revoked, or barred under this chapter or chapter 321J during, and who has been accident and conviction free continuously for, the six-month period immediately preceding the application for an intermediate license. An applicant for an intermediate license must meet the requirements of section 321.186, including satisfactory completion of driver education as required in section 321.178, and payment of the required license fee before an intermediate license will be issued. A person issued an intermediate license must limit the number of passengers in the motor

vehicle when the intermediate licensee is operating the motor vehicle to the number of passenger safety belts.

Except as otherwise provided, a person issued an intermediate license under this subsection who is operating a motor vehicle between the hours of twelve-thirty a.m. and five a.m. must be accompanied by a person issued a driver's license valid for the vehicle operated who is the parent or guardian of the permittee, a member of the permittee's immediate family if the family member is at least twenty-one years of age, an approved driver education instructor, a prospective driver education instructor who is enrolled in a practitioner preparation program with a safety education program approved by the state board of education, or a person at least twenty-five years of age if written permission is granted by the parent or guardian, and who is actually occupying a seat beside the driver. However, a licensee may operate a vehicle to and from school-related extracurricular activities and work without an accompanying driver between the hours of twelve-thirty a.m. and five a.m. if such licensee possesses a waiver on a form to be provided by the department. An accompanying driver is not required between the hours of five a.m. and twelve-thirty a.m.

3. *Remedial driver improvement action or suspension of permit or intermediate license.* A person who has been issued an instruction permit or an intermediate license under this section, upon conviction of a moving traffic violation or involvement in a motor vehicle accident which occurred during the term of the instruction permit or intermediate license, shall be subject to remedial driver improvement action or suspension of the permit or license. A person possessing an instruction permit who has been convicted of a moving traffic violation or has been involved in an accident shall not be issued an intermediate license until the person has completed the remedial driver improvement action and has been accident and conviction free continuously for the six-month period immediately preceding the application for the intermediate license. A person possessing an intermediate license who has been convicted of a moving traffic violation or has been involved in an accident shall not be issued a full driver's license until the person has completed the remedial driver improvement action and has been accident and conviction free continuously for the twelve-month period immediately preceding the application for a full driver's license.

4. *Full driver's license.* A full driver's license may be issued to a person seventeen years of age who possesses an intermediate license issued under subsection 2 or a comparable intermediate license issued by another state for a minimum of twelve months immediately preceding application, and who presents an affidavit signed by a parent or guardian on a form to be provided by the department that the intermediate licensee has ac-

cumulated a total of ten hours of street or highway driving of which two hours were conducted after sunset and before sunrise and the street or highway driving was with the licensee's parent, guardian, instructor, a person certified by the department, or a person at least twenty-five years of age who had written permission from a parent or guardian to accompany the licensee, whose driving privileges have not been suspended, revoked, or barred under this chapter or chapter 321J during, and who has been accident and conviction free continuously for, the twelve-month period immediately preceding the application for a full driver's license, and who has paid the required fee.

5. *Class M license education requirements.* A person under the age of eighteen applying for an intermediate or full 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 transportation or from a private or commercial driver education school licensed by the department of transportation 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 6.

6. *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 state department of transportation 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. The department shall adopt rules under chapter 17A providing for the distribution of moneys to sponsors of motorcycle rider education courses based upon the cost of providing the education courses.

7. *Rules.* The department may adopt rules pursuant to chapter 17A to administer this section.

For applicable scheduled fine, see §805.8A, subsection 4, paragraph a
Section not amended; footnote added

321.182 Application.

Every applicant for a driver's 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. A licensee shall notify the department when the licensee's mailing address changes and provide the new address within thirty days of obtaining the new address. The application provided by the department shall include a statement

for the applicant to sign that acknowledges the applicant's knowledge of the requirement to notify the department of a mailing address change. The penalty under section 321.482 shall not apply to a licensee's failure to notify the department of such an address change.

2. Surrender all other driver's licenses and nonoperator's identification cards.

3. Certify that the applicant has no other driver's license.

4. Certify that the applicant is not currently subject to suspension, revocation, or cancellation of any driver's 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 driver's license.

2001 Acts, ch 32, §42
Subsection 1 amended

321.189 Driver's license — content.

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 motor-cycle.

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 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 assign an applicant for a driver's license a distinguishing driver's license number other than the applicant's social security number, unless the applicant requests that the applicant's social security number be so assigned.

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 driver's 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 driver's 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, the department shall indicate on the license 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 driver's 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 persons under age twenty-one.* A driver's license issued to a person under eighteen years of age shall contain the same information as any other driver's license except that the words "under eighteen" shall appear prominently on the face of the license. A driver's license issued to a person eighteen years of age or older but less than twenty-one years of age shall contain the same information as any other driver's license except that the words "under twenty-one" shall appear prominently on the face of the license. Upon attaining the age of eighteen or upon attaining the age of twenty-one, and upon payment of a one dollar fee, the person shall be entitled to a new driver's license or nonoperator's identification card for the unexpired months of the driver's license or card. An instruction permit or intermediate license issued under section 321.180B, subsection 1 or 2, shall include a distinctive color bar. An intermediate license issued under section 321.180B, subsection 2, shall include the words "intermediate license" printed prominently on the face of the license.

7. *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 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.

2001 Acts, ch 90, §2; 2001 Acts, ch 132, §5; 2001 Acts, ch 180, §7
 Subsection 2, paragraph c amended
 Subsections 4 and 6 amended

321.190 Issuance of nonoperator's identification cards — fee.

1. *Application for and contents of card.*

a. The department shall, upon application and payment of the required fee, issue to an applicant a nonoperator's identification card. To be valid the card shall bear a distinguishing number assigned to the card holder, the full name, date of birth, sex, residence address, a physical description and a colored photograph of the card holder, the usual signature of the card holder, and such other information as the department may require by rule. The card shall be issued to the applicant at the time of application pursuant to procedures established by rule.

b. The department shall not issue a card to a person holding a driver's license. However, a card may be issued to a person holding a temporary permit under section 321.181. The card shall be identical in form to a driver's license issued under section 321.189 except the word "nonoperator" shall appear prominently on the face of the card. A nonoperator's identification card issued to a person under eighteen years of age shall contain the same information as any other nonoperator's identification card except that the words "under eighteen" shall appear prominently on the face of the card. A nonoperator's identification card issued to a person eighteen years of age or older but under twenty-one years of age shall contain the same information as any other nonoperator's identification card except that the words "under twenty-one" shall appear prominently on the face of the card.

c. The department shall use a process or pro-

cesses for issuance of a nonoperator's identification card, that prevent, as nearly as possible, the opportunity for alteration or reproduction of, and the superimposition of a photograph on the nonoperator's identification card without ready detection.

d. The fee for a nonoperator's identification card shall be five dollars and the card shall be valid for a period of four years from the date of issuance. No issuance fee shall be charged for a person whose driver's license or driving privilege has been suspended under section 321.210, subsection 1, paragraph "c".

The nonoperator's identification card fees shall be transmitted by the department to the treasurer of state who shall credit the fees to the road use tax fund.

2. *Cancellation.* The department shall cancel a person's nonoperator's identification card upon determining the person was not entitled to be issued the card, did not provide correct information, committed fraud in applying for the card, or unlawfully used a nonoperator's identification card.

2001 Acts, ch 132, §6
 Subsection 1, paragraph b amended

321.193 Restrictions on licenses — penalty.

As provided by rule, the department may impose restrictions suitable to the licensee's driving ability with respect to the type of motor vehicle or special mechanical control devices required on a motor vehicle which the licensee may operate or other restrictions applicable to the licensee as the department may determine to be appropriate.

The department may set forth restrictions upon the driver's license.

The department may suspend or revoke the driver's license upon receiving satisfactory evidence of any violation of the licensee's restrictions.

It is a simple misdemeanor punishable as a scheduled violation under section 805.8A, subsection 4, paragraph "a", for a person to operate a motor vehicle in any manner in violation of the restrictions imposed on a restricted license issued to that person under this section.

2001 Acts, ch 176, §51, 59
 Unnumbered paragraph 4 amended

321.194 Special minors' licenses.

1. *Driver's license issued for travel to and from school.* Upon certification of a special need by the school board, superintendent of the applicant's school, or principal, if authorized by the superintendent, the department may issue a class C or M driver's license to a person between the ages of fourteen and eighteen years whose driving privileges have not been suspended, revoked, or barred under this chapter or chapter 321J during, and who has not been convicted of a moving traffic violation or involved in a motor vehicle accident for, the six-month period immediately preceding

the application for the special minor's license and who has successfully completed an approved driver education course. However, the completion of a course is not required if the applicant demonstrates to the satisfaction of the department that completion of the course would impose a hardship upon the applicant. The department shall adopt rules defining the term "hardship" and establish procedures for the demonstration and determination of when completion of the course would impose a hardship upon an applicant.

a. The driver's license entitles the holder, while having the license in immediate possession, to operate a motor vehicle other than a commercial motor vehicle or as a chauffeur:

(1) During the hours of 6 a.m. to 10 p.m. over the most direct and accessible route between the licensee's residence and schools of enrollment and between schools of enrollment for the purpose of attending duly scheduled courses of instruction and extracurricular activities within the school district.

(2) At any time when the licensee is accompanied in accordance with section 321.180B, subsection 1.

b. Each application shall be accompanied by a statement from the school board, superintendent, or principal, if authorized by the superintendent, of the applicant's school. The statement shall be upon a form provided by the department. The school board, superintendent, or principal, if authorized by the superintendent, shall certify that a need exists for the license and that the board, superintendent, or principal authorized by the superintendent is not responsible for actions of the applicant which pertain to the use of the driver's license. Upon receipt of a statement of necessity, the department shall issue the driver's license. The fact that the applicant resides at a distance less than one mile from the applicant's school of enrollment is prima facie evidence of the nonexistence of necessity for the issuance of a license. The school board shall develop and adopt a policy establishing the criteria that shall be used by a school district administrator to approve or deny certification that a need exists for a license. The student may appeal to the school board the decision of a school district administrator to deny certification. The decision of the school board is final. The driver's license shall not be issued for purposes of attending a public school in a school district other than either of the following:

(1) The district of residence of the parent or guardian of the student.

(2) A district which is contiguous to the district of residence of the parent or guardian of the student, if the student is enrolled in the public school which is not the school district of residence because of open enrollment under section 282.18 or as a result of an election by the student's district of residence to enter into one or more sharing

agreements pursuant to the procedures in chapter 282.

2. *Suspension and revocation.* A driver's license issued under this section is subject to suspension or revocation for the same reasons and in the same manner as suspension or revocation of any other driver's license. The department may also suspend a driver's license issued under this section upon receiving satisfactory evidence that the licensee has violated the restrictions of the license or has been involved in one or more accidents chargeable to the licensee. The department may suspend a driver's license issued under this section upon receiving a record of the licensee's conviction for one violation. The department shall revoke the license upon receiving a record of conviction for two or more violations of a law of this state or a city ordinance regulating the operation of motor vehicles on highways other than parking violations as defined in section 321.210. After a person licensed under this section receives two or more convictions which require revocation of the person's license under this section, the department shall not grant an application for a new driver's license until the expiration of one year.

2001 Acts, ch 159, §17

For applicable scheduled fine, see §805.8A, subsection 4, paragraph a
Subsection 1, paragraph b, unnumbered paragraph 1 amended

321.196 Expiration of license — renewal.

Except as otherwise provided, a driver's license, other than an instruction permit, chauffeur's instruction permit, or commercial driver's instruction permit issued under section 321.180, expires, at the option of the applicant, two or four years from the licensee's birthday anniversary occurring in the year of issuance if the licensee is between the ages of seventeen years eleven months and seventy years on the date of issuance of the license. If the licensee is under the age of seventeen years eleven months or age seventy or over, the license is effective for a period of two years from the licensee's birthday anniversary occurring in the year of issuance. Except as required in section 321.188, and except for a motorcycle instruction permit issued in accordance with section 321.180 or 321.180B, a driver's license is renewable without written examination or penalty within a period of sixty days after its expiration date and without a driving test within a period of one year after its expiration date. A person shall not be considered to be driving with an invalid license during a period of sixty days following the license expiration date. However, for a license renewed within the sixty-day period, the date of issuance shall be considered to be the previous birthday anniversary on which it expired. Applicants whose licenses are restricted due to vision or other physical deficiencies may be required to renew their licenses every two years. For the purposes of this section, the birthday anniversary of a person born on February 29 shall be deemed to occur on March 1. The

department in its discretion may authorize the renewal of a valid driver's license other than a commercial driver's license upon application without an examination provided that the applicant satisfactorily passes a vision test as prescribed by the department or files a vision report in accordance with section 321.186A which shows that the applicant's visual acuity level meets or exceeds those required by the department. An application for renewal of a driver's license shall include a statement for the applicant to sign that acknowledges the applicant's knowledge of the requirement to notify the department of a mailing address change under section 321.182, subsection 1.

Any resident of Iowa holding a valid driver's license who is temporarily absent from the state, or incapacitated, may, at the time for renewal for such license, apply to the department for a temporary extension of the license. The department upon receipt of the application shall, upon a showing of good cause, issue a temporary extension of the driver's license for a period not to exceed six months.

2001 Acts, ch 32, §43; 2001 Acts, ch 180, §§
See Code editor's note to §12.65
Unnumbered paragraph 1 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.

f. Operating a commercial motor vehicle while any amount of a controlled substance is present in the person, as measured in the person's blood or urine.

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 as adopted 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 driver's 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 driver's 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. A person is disqualified from operating a

commercial motor vehicle if the person is convicted of a first, second, or third railroad crossing at grade violation as follows:

a. A person is disqualified from operating a commercial motor vehicle for sixty days if the person is convicted of a first railroad crossing at grade violation under section 321.343 and the violation occurred while the person was operating a commercial motor vehicle.

b. A person is disqualified from operating a commercial motor vehicle for one hundred twenty days if the person is convicted of a second railroad crossing at grade violation under section 321.343, the violation occurred while the person was operating a commercial motor vehicle, and the violation occurred within three years after a first such violation.

c. A person is disqualified from operating a commercial motor vehicle for one year if the person is convicted of a third or subsequent railroad crossing at grade violation under section 321.343, the violation occurred while the person was operating a commercial motor vehicle, and the violation occurred within three years after a first such violation.

8. 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 thirty days' advance notice, disqualify the person from operating a commercial motor vehicle upon a highway.

9. 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 thirty days' advance notice, disqualify the person from operating a commercial motor vehicle upon a highway.

The effective date of disqualification shall be thirty 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, notwithstanding chapter 17A, the department may notify the person by first class 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 thirty 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.

10. 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.

11. 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.

12. 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.

13. As used in this section, the terms "*acts*", "*actions*", and "*offenses*" mean acts, actions, or offenses which occur on or after July 1, 1990.

2001 Acts, ch 32, §44; 2001 Acts, ch 132, §7
NEW subsection 7 and former subsections 7 – 12 renumbered as 8 – 13
Subsection 9, unnumbered paragraph 2 amended

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. A person who violates this section shall be subject to a scheduled fine of one hundred dollars under section 805.8A, subsection 13, paragraph "c".

2001 Acts, ch 137, §5
Internal reference change applied

321.210B Nonrenewal or suspension for failure to pay indebtedness owed to the state.

The department shall suspend or refuse to renew the driver's 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 or shall not be renewed 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.

For provisions establishing a driver's license indebtedness clearance pilot project effective May 19, 1997, see 97 Acts, ch 153, §2, 4
Section not amended; footnote added

321.211A Appeal of extended suspension or revocation.

Notwithstanding any provision of law to the contrary, if a person was not served with notice of a suspension or revocation under section 321.16, or section 321J.9, subsection 4, or section 321J.12, subsection 3, the person may appeal to the department an extension of the period of suspension or revocation based upon a conviction under section 321.218 or 321J.21. At the hearing on the appeal, the sole issue shall be whether the department failed to send notice of the underlying suspension or revocation to the person at the address contained in the department's records. If the department determines it failed to send such notice, the department shall rescind the extended suspension or revocation resulting from the conviction and send notice of the department's determination to the court that rendered the conviction. Upon receipt of the notice, the court shall enter an order exonerating the person of the conviction and ordering that the record of the conviction be expunged by the clerk of the district court.

2001 Acts, ch 32, §45
NEW section

321.213A License suspension for juveniles adjudicated delinquent for certain drug or alcohol offenses.

Upon the entering of a dispositional order under section 232.52, subsection 2, paragraph "a", the clerk of the juvenile court shall forward a copy of the adjudication and the dispositional order suspending or revoking the driver's license or operating privileges of the juvenile 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, if eligible, as provided in section 321.215.

2001 Acts, ch 132, §8
Section amended

321.215 Temporary restricted license.

1. The department, on application, may issue a temporary restricted license to a person whose noncommercial driver's 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 en-

rolled 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 pursuant to a court order issued under section 901.5, subsection 10, or under section 321.209, subsections 1 through 5 or subsection 7, or to a juvenile whose license has been suspended or revoked pursuant to a dispositional order under section 232.52, subsection 2, paragraph "a", 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 noncommercial driver's license under section 321.209, subsection 5 or 6; section 321.210; 321.210A; or 321.513; or upon revocation pursuant to a court order issued under section 901.5, subsection 10; or upon the denial of issuance of a noncommercial driver's 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 or revoked pursuant to a dispositional order under section 232.52, subsection 2, paragraph "a", for a violation of chapter 124 or 453B, or section 126.3, a person may petition the district court having jurisdiction for the residence of the person for a temporary restricted license to operate a motor vehicle for the limited purpose or purposes specified in subsection 1. The petition shall include a current certified copy of the petitioner's official driving record issued by the department. The application may be granted only if all of the following criteria are satisfied:

a. The temporary restricted license is requested only for a case of extreme hardship or compelling circumstances where alternative means of transportation do not exist.

b. The license applicant has not made an application for a temporary restricted license in any district court in the state which was denied.

c. The temporary restricted license is restricted to the limited purpose or purposes specified in subsection 1 at times specified in the license.

d. Proof of financial responsibility is established as defined in chapter 321A. However, such proof is not required if the driver's license was suspended under section 321.210A or 321.513 or revoked pursuant to a court order issued under sec-

tion 901.5, subsection 10.

If the district court determines that a temporary restricted license is necessary, the court shall order the department to issue a temporary restricted license to the applicant. The court shall forward a record of each application for a temporary restricted license to the department, together with the results of the disposition of the request by the court.

3. The temporary restricted license shall be canceled upon conviction of a moving traffic violation or upon a violation of a term of the license. A “*moving traffic violation*” does not include a parking violation as defined in section 321.210.

4. The temporary restricted license 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.

2001 Acts, ch 132, §9
Subsections 2 – 4 amended

321.216 Unlawful use of license or nonoperator’s identification card — penalty.

It is a simple misdemeanor punishable as a scheduled violation under section 805.8A, subsection 4, paragraph “b”, for any person:

1. To display or cause or permit to be displayed or have in the person’s possession a canceled, revoked, suspended, fictitious, or fraudulently altered driver’s license or nonoperator’s identification card.

2. To lend that person’s driver’s license or nonoperator’s identification card to another person or knowingly permit the use of the license by another.

3. To display or represent as one’s own a driver’s license or nonoperator’s identification card not issued to that person.

4. To fail or refuse to surrender to the department upon its lawful demand a driver’s license or nonoperator’s identification card which has been suspended, revoked, or canceled.

5. To permit an unlawful use of a driver’s license or nonoperator’s identification card issued to that person.

2001 Acts, ch 176, §52, 59
Unnumbered paragraph 1 amended

321.216B Use of driver’s license or nonoperator’s identification card by underage person to obtain alcohol.

A person who is under the age of twenty-one, who alters or displays or has in the person’s possession a fictitious or fraudulently altered driver’s license or nonoperator’s identification card and who uses the license to violate or attempt to violate section 123.47, commits a simple misdemeanor punishable as a scheduled violation under section 805.8A, subsection 4, paragraph “c”. The court shall forward a copy of the conviction to the department.

2001 Acts, ch 176, §53, 59
Legislative intent regarding effect on insurance rates; 93 Acts, ch 164, §6
Section amended

321.216C Use of driver’s license or nonoperator’s identification card by underage person to obtain cigarettes or tobacco products.

A person who is under the age of eighteen, who alters or displays or has in the person’s possession a fictitious or fraudulently altered driver’s license or nonoperator’s identification card and who uses the license or card to violate or attempt to violate section 453A.2, subsection 2, commits a simple misdemeanor punishable as a scheduled violation under section 805.8A, subsection 4, paragraph “c”. The court shall forward a copy of the conviction to the department.

2001 Acts, ch 176, §54, 59
Section amended

321.218A Civil penalty — disposition — reinstatement.

When the department suspends, revokes, or bars a person’s driver’s license or nonresident operating privilege for a conviction under this chapter, the department shall assess the person a civil penalty of two hundred dollars. However, for persons age nineteen or under, the civil penalty assessed shall be fifty dollars. The civil penalty does not apply to a suspension issued for a violation of section 321.180B. The money collected by the department under this section shall be transmitted to the treasurer of state who shall deposit the money in the juvenile detention home fund created in section 232.142. A temporary restricted license shall not be issued or a driver’s license or nonresident operating privilege reinstated until the civil penalty has been paid.

2001 Acts, ch 191, §42
Section amended

321.219 Permitting unauthorized minor to drive.

A person shall not cause or knowingly permit the person’s child or ward under the age of eighteen years to drive a motor vehicle upon any highway when the minor is not authorized under this section or in violation of this chapter.

A person convicted of a violation of this section is guilty of a simple misdemeanor punishable as a scheduled violation under section 805.8A, subsection 4, paragraph “c”.

2001 Acts, ch 137, §5
Internal reference change applied

321.220 Permitting unauthorized person to drive.

A person shall not knowingly authorize or permit a motor vehicle owned by the person or under the person’s control to be driven upon a highway by a person who is not issued a driver’s license valid for the vehicle’s operation.

A person convicted of a violation of this section is guilty of a simple misdemeanor punishable as a scheduled violation under section 805.8A, subsection 4, paragraph “c”.

2001 Acts, ch 137, §5
Internal reference change applied

321.227 Violations. Repealed by 87 Acts, ch 170, § 20.

Reference deleted editorially

321.229 Obedience to peace officers.

No person shall willfully fail or refuse to comply with any lawful order or direction of any peace officer invested by law with authority to direct, control, or regulate traffic.

For applicable scheduled fine, see §805.8A, subsection 14, paragraph a Section not amended; footnote added

321.231 Authorized emergency vehicles and police bicycles.

1. The driver of an authorized emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected perpetrator of a felony or in response to an incident dangerous to the public or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this section.

2. The driver of any authorized emergency vehicle, may:

a. Park or stand an authorized emergency vehicle, irrespective of the provisions of this chapter.

b. Disregard laws or regulations governing direction of movement for the minimum distance necessary before an alternative route that conforms to the traffic laws and regulations is available.

3. The driver of a fire department vehicle, police vehicle, or ambulance, or a peace officer riding a police bicycle in the line of duty may do any of the following:

a. Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation.

b. Exceed the maximum speed limits so long as the driver does not endanger life or property.

4. The exemptions granted to an authorized emergency vehicle under subsection 2 and for a fire department vehicle, police vehicle, or ambulance as provided in subsection 3 shall apply only when such vehicle is making use of an audible signaling device meeting the requirements of section 321.433 or a visual signaling device, except that use of an audible or visual signaling device shall not be required when exercising the exemption granted under subsection 3, paragraph "b" of this section when the vehicle is operated by a peace officer, pursuing a suspected violator of the speed restrictions imposed by or pursuant to this chapter, for the purpose of determining the speed of travel of such suspected violator.

5. The foregoing provisions shall not relieve the driver of an authorized emergency vehicle or the rider of a police bicycle from the duty to drive or ride with due regard for the safety of all persons, nor shall such provisions protect the driver or rider from the consequences of the driver's or rider's

reckless disregard for the safety of others.

For applicable scheduled fines, see §805.8A, subsection 11, paragraph a Section not amended; footnote added

321.232 Radar jamming devices — penalty.

1. A person shall not sell, operate or possess a radar jamming device, except as otherwise provided in this section, when the device is in a vehicle operated on the highways of this state or the device is held for sale in this state.

2. This section does not apply to radar speed measuring devices purchased by, held for purchase for, or operated by peace officers using the devices in their official duties.

3. A radar jamming device may be seized by a peace officer subject to forfeiture as provided by chapter 809 or 809A.

4. For the purposes of this section "radar jamming device" means any mechanism designed or used to transmit radio waves in the electromagnetic wave spectrum to interfere with the reception of those emitted from a device used by peace officers of this state to measure the speed of motor vehicles on the highways of this state and which is not designed for two-way transmission and cannot transmit in plain language.

For applicable scheduled fines, see §805.8A, subsection 14, paragraph g Section not amended; footnote added

321.234 Bicycles, animals, or animal-drawn vehicles.

1. A person riding an animal or driving an animal drawing a vehicle upon a roadway is subject to the provisions of this chapter applicable to the driver of a vehicle, except those provisions of this chapter which by their nature can have no application.

2. A person, including a peace officer, riding a bicycle on the highway is subject to the provisions of this chapter and has all the rights and duties under this chapter applicable to the driver of a vehicle, except those provisions of this chapter which by their nature can have no application or those provisions for which specific exceptions have been set forth regarding police bicycles.

3. A person propelling a bicycle on the highway shall not ride other than upon or astride a permanent and regular seat attached to the bicycle.

4. A person shall not use a bicycle on the highway to carry more persons at one time than the number of persons for which the bicycle is designed and equipped.

5. This section does not apply to the use of a bicycle in a parade authorized by proper permit from local authorities.

For applicable scheduled fines, see §805.8A, subsection 9 Section not amended; footnote added

321.234A All-terrain vehicles — bicycle safety flag required.

All-terrain vehicles shall be operated on a highway only between sunrise and sunset and only

when the operation on the highway is incidental to the vehicle's use for agricultural purposes. A person operating an all-terrain vehicle on a highway shall have a valid driver's license and the vehicle shall be operated at speeds of thirty-five miles per hour or less. When operated on a highway, an all-terrain vehicle shall have a bicycle safety flag which extends not less than five feet above the ground attached to the rear of the vehicle. The bicycle safety flag shall be triangular in shape with an area of not less than thirty square inches, be Day-Glo in color, and shall be in lieu of the reflective equipment required by section 321.383.

A person convicted of a violation of this section is guilty of a simple misdemeanor punishable as a scheduled violation under section 805.8A, subsection 3, paragraph "f".

2001 Acts, ch 137, §5
Internal reference change applied

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 one hundred 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.

A person charged with impeding or blocking traffic for lack of snow tires, chains, or nonslip differential shall have the charge dismissed upon a showing to the court that the person's motor vehicle was equipped with snow tires, chains, or 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, regu-

late 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.

For fines applicable to offenses charged as scheduled violations, see §805.8A

Section not amended; footnote added

321.239 Counties may restrict parking of vehicles.

1. The county board of supervisors may adopt, amend, or repeal traffic ordinances to regulate or prohibit the standing or parking of vehicles within the right of way of any highway under its jurisdiction.

2. Any person violating a traffic ordinance adopted under this section shall be guilty of a misdemeanor and shall, upon conviction, be fined not to exceed twenty-five dollars, or be imprisoned not to exceed seven days in the county jail. The form and style of the information shall be in the name of the county and as against the person in violation of the traffic ordinance.

For fines applicable to offenses charged as scheduled violations, see §805.8A, subsection 1, paragraph a

Unnumbered paragraphs 1 and 2 editorially designated as subsections 1 and 2

Section not amended; footnote added

321.247 Golf cart operation on city streets.

Incorporated areas may, upon approval of their governing body, allow the operation of golf carts on city streets by persons possessing a valid driver's license. However, a golf cart shall not be operated upon a city street which is a primary road extension through the city but shall be allowed to cross a city street which is a primary road extension through the city. The golf carts shall be equipped with a slow moving vehicle sign and a bicycle safety flag and operate on the streets only from sunrise to sunset. Golf carts operated on city streets shall be equipped with adequate brakes and shall meet any other safety requirements imposed by the governing body. Golf carts are not subject to the registration provisions of this chapter.

A person convicted of a violation of this section is guilty of a simple misdemeanor punishable as a scheduled violation under section 805.8A, subsection 3, paragraph "f".

2001 Acts, ch 137, §5

Internal reference change applied

321.251 Rights of owners of real property — manufactured home communities or mobile home parks.

1. This chapter shall not be construed to prevent the owner of real property used by the public for purposes of vehicular travel by permission of the owner and not as matter of right from prohibiting such use, or from requiring other or different or additional conditions than those specified in this chapter, or otherwise regulating such use as may seem best to such owner.

2. a. The owner of real property upon which a manufactured home community or mobile home park is located may elect to have the vehicular traffic provisions of this chapter, or the ordinances, rules, or regulations of the local authority where the real property is located, apply to the real property and any persons located on the real property by granting authority to any peace officer to enforce the vehicular traffic provisions of this chapter, or the ordinances, rules, or regulations of the local authority as well as any regulations or conditions imposed on the real property pursuant to subsection 1. An election made pursuant to this subsection shall not create a higher priority for the enforcement of traffic laws on real property upon which a manufactured or mobile home is located than exists for the enforcement of traffic laws on public property.

b. A written notice of election shall be filed with the designated officials of the local authority whose ordinances, rules, or regulations will govern the vehicular traffic. The appropriate officials shall be the city clerk and chief of police of the city in which the real property is located and the county sheriff and the county recorder of the county in which the real property is located. The notice shall include the legal description of the real property, the street address, if any, and the date and time when the owner wishes the election to become effective. The notice shall be signed by every titleholder of the real property and acknowledged by a notary public.

c. An election shall terminate fourteen days following the filing of a written notice of withdrawal with the designated officials of the local authority whose ordinances, rules, or regulations will govern.

d. For purposes of this subsection, "titleholder of real property" means the person or entity whose name appears on the documents of title filed in the official county records as the owner of the real property upon which a manufactured home community or mobile home park is located.

3. The titleholder of real property under subsection 2 may elect to waive the right to have the vehicular traffic provisions of this chapter, or the ordinances, rules, or regulations of the local authority where the real property is located, apply to the real property and any persons located on the

real property, by recording a waiver with the county recorder of each county in which the property is located. The waiver shall include the legal description of the real property and shall bind the titleholder of the real property and any successors in interest. The waiver may only be rescinded if each law enforcement jurisdiction, in which the titleholder of real property wishes to obtain the benefit of this section, consents to the rescission of the waiver through adoption of a resolution.

2001 Acts, ch 153, §15, 16; 2001 Acts, ch 176, §80
Terminology changes applied

321.256 Obedience to official traffic-control devices.

No driver of a vehicle shall disobey the instructions of any official traffic-control device placed in accordance with the provisions of this chapter, unless at the time otherwise directed by a peace officer subject to the exceptions granted the driver of an authorized emergency vehicle.

For applicable scheduled fine, see §805.8A, subsection 8
Section not amended; footnote added

321.257 Official traffic control signal.

1. For the purposes of this section “*stop at the official traffic control signal*” means stopping at the first opportunity at either the clearly marked stop line or before entering the crosswalk or before entering the intersection.

2. Official traffic control signals consisting of colored lights or colored lighted arrows shall regulate vehicle and pedestrian traffic in the following manner:

a. A “*steady circular red*” light means vehicular traffic shall stop. Vehicular traffic shall remain standing until a signal to proceed is shown or vehicular traffic, unless prohibited by a sign, may cautiously enter the intersection to make a right turn from the right lane of traffic or a left turn from a one-way street to a one-way street from the left lane of traffic on a one-way street onto the leftmost lane of traffic on a one-way street. Turns made under this paragraph shall be made in a manner that does not interfere with other vehicular or pedestrian traffic lawfully using the intersection. Pedestrian traffic facing a steady circular red light shall not enter the roadway unless the pedestrian can safely cross the roadway without interfering with any vehicular traffic.

b. A “*steady circular yellow*” or “*steady yellow arrow*” light means vehicular traffic is warned that the related green movement is being terminated and vehicular traffic shall no longer proceed into the intersection and shall stop. If the stop cannot be made in safety, a vehicle may be driven cautiously through the intersection. Pedestrian traffic is warned that there is insufficient time to cross the intersection and any pedestrian starting to cross the roadway shall yield the right of way to all vehicles.

c. A “*steady circular green*” light means vehic-

ular traffic may proceed straight, turn right or turn left through the intersection unless otherwise specifically prohibited. Vehicular traffic shall yield the right of way to other vehicular and pedestrian traffic lawfully within the intersection.

d. A “*steady green arrow*” light shown alone or with another official traffic control signal means vehicular traffic may cautiously enter the intersection and proceed in the direction indicated by the arrow. Vehicular traffic shall yield the right of way to other vehicles and pedestrians lawfully within the intersection.

e. A “*flashing circular red*” light means vehicular traffic shall stop and after stopping may proceed cautiously through the intersection yielding to all vehicles not required to stop or yield which are within the intersection or approaching so closely as to constitute a hazard, but then may proceed.

f. A “*flashing yellow*” light means vehicular traffic shall proceed through the intersection or past such signal with caution.

g. A “*don’t walk*” light is a pedestrian signal which means that pedestrian traffic facing the illuminated pedestrian signal shall not start to cross the roadway in the direction of the pedestrian signal, and pedestrian traffic in the crossing shall proceed to a safety zone.

h. A “*walk*” light is a pedestrian signal which means that pedestrian traffic facing the illuminated pedestrian signal may proceed to cross the roadway in the direction of the pedestrian signal and shall be given the right of way by drivers of all vehicles.

For applicable scheduled fines, see §805.8A, subsection 7, paragraph a, and subsection 9
Section not amended; footnote added

321.271 Reports confidential — without prejudice — exceptions.

All accident reports filed by a driver of a vehicle involved in an accident as required under section 321.266 shall be in writing. The report shall be without prejudice to the individual so reporting and shall be for the confidential use of the department, except that upon the request of any person involved in the accident, the person’s insurance company or its agent, or the attorney for such person, the department shall disclose the identity and address of other persons involved in the accident and may disclose the name of the insurance companies with whom the other persons have liability insurance. The department, upon written request of the person making the report, shall provide the person with a copy of that person’s report. The written report filed with the department shall not be admissible in or used in evidence in any civil or criminal case arising out of the facts on which the report is based.

All written reports filed by a law enforcement officer as required under section 321.266 shall be made available to any party to an accident, the

party's insurance company or its agent, the party's attorney, the federal motor carrier safety administration, or the attorney general, on written request to the department and the payment of a fee of four dollars for each copy. If a copy of an investigating officer's report of a motor vehicle accident filed with the department is retained by the law enforcement agency of the officer who filed the report, a copy shall be made available to any party to the accident, the party's insurance company or its agent, the party's attorney, the federal motor carrier safety administration, or the attorney general, on written request and the payment of a fee. However, the attorney general and the federal motor carrier safety administration shall not be required by the department or the law enforcement agency to pay a fee for a copy of a report filed by a law enforcement or investigating officer.

2001 Acts, ch 32, §18
Unnumbered paragraph 2 amended

321.275 Operation of motorcycles and motorized bicycles.

1. *General.* The motor vehicle laws apply to the operators of motorcycles and motorized bicycles to the extent practically applicable.

2. *Riders.*

a. *Motorized bicycles.* A person operating a motorized bicycle on the highways shall not carry any other person on the vehicle.

b. *Motorcycles.* A person shall not operate or ride a motorcycle on the highways with another person on the motorcycle unless the motorcycle is designed to carry more than one person. The additional passenger may ride upon the permanent and regular seat if designed for two persons, or upon another seat firmly attached to the motorcycle at the rear of the operator. The motorcycle shall be equipped with footrests for the passenger unless the passenger is riding in a sidecar or enclosed cab. The motorcycle operator shall not carry any person nor shall any other person ride in a position that will interfere with the operation or control of the motorcycle or the view of the operator.

3. *Sitting position.* A person operating a motorcycle or motorized bicycle shall ride only upon the vehicle's permanent and regular attached seat. Every person riding upon the vehicle shall be sitting astride the seat, facing forward with one leg on either side of the vehicle.

4. *Use of traffic lanes.* Persons shall not operate motorcycles or motorized bicycles more than two abreast in a single lane. Except for persons operating such vehicles two abreast, a motor vehicle shall not be operated in a manner depriving a motorcycle or motorized bicycle operator of the full use of a lane. A motorcycle or motorized bicycle shall not be operated between lanes of traffic or between adjacent lines or rows of vehicles. The operator of a motorcycle or motorized bicycle shall not overtake and pass in the same lane occupied by the

vehicle being overtaken unless the vehicle being overtaken is a motorcycle or motorized bicycle.

5. *Headlights on.* A person shall not operate a 1977 or later model year motorcycle or any model year motorized bicycle upon the highways without displaying at least one lighted headlamp of the type described in section 321.409. However, this subsection is subject to the exceptions with respect to parked vehicles as provided in this chapter.

6. *Packages.* The operator of a motorcycle or motorized bicycle shall not carry any package, bundle, or other article which prevents the operator from keeping both hands on the handlebars.

7. *Parades.* The provisions of this section do not apply to motorcycles or motorized bicycles when used in a parade authorized by proper permit from local authorities.

8. *Bicycle safety flags required on motorized bicycles.* When operated on a highway, a motorized bicycle shall have a bicycle safety flag which extends not less than five feet above the ground attached to the rear of the motorized bicycle. The bicycle safety flag shall be triangular in shape with an area of not less than thirty square inches, and be Day-Glo in color.

For applicable scheduled fines, see §805.8A, subsection 6, paragraph b, and subsection 9

Section not amended; footnote added

321.277A Careless driving.

A person commits careless driving if the person intentionally operates a motor vehicle on a public road or highway in any one of the following ways:

1. Creates or causes unnecessary tire squealing, skidding, or sliding upon acceleration or stopping.

2. Simulates a temporary race.

3. Causes any wheel or wheels to unnecessarily lose contact with the ground.

4. Causes the vehicle to unnecessarily turn abruptly or sway.

For applicable scheduled fine, see §805.8A, subsection 6, paragraph b
Section not amended; footnote added

321.284 Open containers in motor vehicles — drivers.

A driver of a motor vehicle upon a public street or highway shall not possess in the passenger area of the motor vehicle an open or unsealed bottle, can, jar, or other receptacle containing an alcoholic beverage. "Passenger area" means the area designed to seat the driver and passengers while the motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while in their seating positions, including the glove compartment. An open or unsealed receptacle containing an alcoholic beverage may be transported in the trunk of the motor vehicle. An unsealed receptacle containing an alcoholic beverage may be transported behind the last upright seat of the motor vehicle if the motor vehicle does not have a trunk. A person convicted of a violation

of this section is guilty of a simple misdemeanor punishable as a scheduled violation under section 805.8A, subsection 14, paragraph “e”.

2001 Acts, ch 137, §5
Internal reference change applied

321.284A Open containers in motor vehicles — passengers.

1. A passenger in a motor vehicle upon a public street or highway shall not possess in the passenger area of the motor vehicle an open or unsealed bottle, can, jar, or other receptacle containing an alcoholic beverage. “*Passenger area*” means the area of a motor vehicle designed to seat the driver and passengers while the motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while in their seating positions, including the glove compartment. An open or unsealed receptacle containing an alcoholic beverage may be transported in the trunk of the motor vehicle. An unsealed receptacle containing an alcoholic beverage may be transported behind the last upright seat of the motor vehicle if the motor vehicle does not have a trunk.

2. This section does not apply to a passenger being transported in a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation, or a passenger being transported in the living quarters of a motor home, manufactured or mobile home, travel trailer, or fifth-wheel travel trailer.

3. A person convicted of a violation of this section is guilty of a simple misdemeanor punishable as a scheduled violation under section 805.8A, subsection 14, paragraph “e”.

4. The department shall not include a conviction for a violation of this section on the individual driving record of the person committing the violation and the conviction shall not be considered by the department in any proceeding for suspension, revocation, barring, or denying of the person’s driver’s license or upon any application for renewal of driving privileges.

2001 Acts, ch 137, §5; 2001 Acts, ch 153, §15; 2001 Acts, ch 176, §80
Terminology change applied
Internal reference change applied

321.285 Speed restrictions.

Any person driving a motor vehicle on a highway shall drive the same at a careful and prudent speed not greater than nor less than is reasonable and proper, having due regard to the traffic, surface, and width of the highway and of any other conditions then existing, and no person shall drive any vehicle upon a highway at a speed greater than will permit the person to bring it to a stop within the assured clear distance ahead, such driver having the right to assume, however, that all persons using said highway will observe the law.

The following shall be the lawful speed except as provided by this section, or except as posted pur-

suant to sections 262.68, 321.236, subsection 5, section 321.288, subsection 6, sections 321.289, 321.290, 321.293, 321.295, and 461A.36, and any speed in excess thereof shall be unlawful:

1. Twenty miles per hour in any business district.

2. Twenty-five miles per hour in any residence or school district.

3. Forty-five miles per hour in any suburban district. Each school district as defined in subsection 70 of section 321.1 shall be marked by distinctive signs as provided by the current manual of uniform traffic control devices adopted by the department and placed on the highway at the limits of such school district.

4. Notwithstanding any other speed restrictions, the speed limit for all vehicular traffic shall be fifty-five miles per hour.

5. Reasonable and proper, but not greater than fifty-five miles per hour at any time between sunrise and sunset, and not greater than fifty miles per hour at any time between sunset and sunrise, on secondary roads unless such roads are surfaced with concrete or asphalt or a combination of both, in which case the speed limits shall be the same as provided in subsection 4 of this section. When the board of supervisors of any county shall determine upon the basis of an engineering and traffic investigation that the speed limit on any secondary road is greater than is reasonable and proper under the conditions found to exist at any intersection or other place or upon any part of a secondary road, the board shall determine and declare a reasonable and proper speed limit at the intersection or other part of the secondary road. The speed limits as determined by the board of supervisors shall be effective when appropriate signs giving notice of the speed limits are erected by the board of supervisors at the intersection or other place or part of the highway.

6. Notwithstanding any other speed restrictions, the speed limit for all vehicular traffic on fully controlled-access, divided, multilaned highways including the national system of interstate highways is sixty-five miles per hour. The department may establish a speed limit of sixty-five miles per hour on certain divided, multilaned highways. However, the department or cities with the approval of the department may establish a lower speed limit upon such highways located within the corporate limits of a city. For the purposes of this subsection, a fully controlled-access highway is a highway that gives preference to through traffic by providing access connections with selected public roads only and by prohibiting crossings at grade or direct private driveway connections. A minimum speed may be established by the department on the highways referred to in this subsection if warranted by engineering and traffic investigations.

It is further provided that any kind of vehicle,

implement, or conveyance incapable of attaining and maintaining a speed of forty miles per hour shall be prohibited from using the interstate system.

For applicable scheduled fines, see §805.8A, subsections 5 and 10
Section not amended; footnote added

321.288 Control of vehicle — reduced speed.

A person operating a motor vehicle shall have the vehicle under control at all times and shall reduce the speed to a reasonable and proper rate:

1. When approaching and passing a person walking in the traveled portion of the public highway.

2. When approaching and passing an animal which is being led, ridden, or driven upon a public highway.

3. When approaching and traversing a crossing or intersection of public highways, or a bridge, sharp turn, curve, or steep descent, in a public highway.

4. When approaching and passing an emergency warning device displayed in accordance with rules adopted under section 321.449, or an emergency vehicle displaying a revolving or flashing light.

5. When approaching and passing a slow moving vehicle displaying a reflective device or alternative reflective device as provided by section 321.383.

6. When approaching and passing through a sign-posted road work zone upon the public highway.

For applicable scheduled fine, see §805.8A, subsection 6, paragraph c
Section not amended; footnote added

321.294 Minimum speed regulation.

A person shall not drive a motor vehicle at such a slow speed as to impede or block the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law. Peace officers are hereby authorized to enforce this provision by directions to drivers, and in the event of apparent willful disobedience to this provision and refusal to comply with direction of an officer in accordance herewith the continued slow operation by a driver shall be a simple misdemeanor punishable as a scheduled violation under section 805.8A, subsection 8.

2001 Acts, ch 137, §5
See also §321.382
Internal reference change applied

321.295 Limitation on bridge or elevated structures.

No person shall drive a vehicle on any public bridge or elevated structure at a speed which is greater than the maximum speed permitted under this chapter on the street or highway at a point where said street or highway joins said bridge or elevated structure, provided that if the maximum

speed permitted on said street or highway differs from the maximum speed on any other street or highway joining said bridge or elevated structure, then the lowest of said speeds shall be the maximum speed limit on said bridge or elevated structure, subject to the following:

The department upon request from any local authority shall, or upon its own initiative may, conduct an investigation of any bridge or other elevated structure constituting a part of a highway, and if it shall thereupon find that such structure cannot with safety to itself withstand vehicles traveling at the speed otherwise permissible under this chapter, the department shall determine and declare the maximum speed of vehicles which such structure can withstand, and shall cause or permit suitable signs stating such maximum speed to be erected and maintained at a distance of two hundred feet before each end of such structure.

No person shall drive a vehicle over any bridge or other elevated structure constituting a part of a highway at a speed which is greater than the maximum speed which can be maintained with safety to such bridge or structure, when such structure is signposted as provided in this section.

Upon the trial of any person charged with driving a vehicle at a speed which is greater than the maximum speed which can be maintained with safety to such bridge or structure, proof of such determination of the maximum speed by said department and the existence of said signs shall constitute conclusive evidence of the maximum speed which can be maintained with safety to such bridge or structure.

For applicable scheduled fine, see §805.8A, subsection 5, paragraph e
Section not amended; footnote added

321.297 Driving on right-hand side of roadway — exceptions.

1. A vehicle shall be driven upon the right half of the roadway upon all roadways of sufficient width, except as follows:

a. When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement.

b. When an obstruction exists making it necessary to drive to the left of the center of the roadway, provided, any person so doing shall yield the right of way to all vehicles traveling in the proper direction upon the unobstructed portion of the roadway within such distance as to constitute an immediate hazard.

c. Upon a roadway divided into three marked lanes for traffic under the rules applicable thereon.

d. Upon a roadway restricted to one-way traffic.

2. Any vehicle proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing shall be driven in the right-hand lane then available for traffic upon

all roadways, or as close as practicable to the right-hand curb or edge of the roadway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection, an alley, private road or driveway.

3. A vehicle shall not be driven upon any roadway having four or more lanes for moving traffic and providing for two-way movement of traffic, to the left of the center line of the roadway, except when authorized by official traffic-control devices designating certain lanes to the left side of the center of the roadway for use by traffic not otherwise permitted to use such lanes, or except as permitted under subsection 1, paragraph "b". This subsection shall not be construed as prohibiting the crossing of the center line in making a left turn into or from an alley, private road, or driveway.

For applicable scheduled fine, see §805.8A, subsection 6, paragraph c
Section not amended; footnote added

321.298 Meeting and turning to right.

Except as otherwise provided in section 321.297, vehicles or persons on horseback meeting each other on any roadway shall yield one-half of the roadway by turning to the right.

For applicable scheduled fine, see §805.8A, subsection 7, paragraph b
Section not amended; footnote added

321.299 Overtaking a vehicle.

The following rules shall govern the overtaking and passing of vehicles proceeding in the same direction, subject to those limitations, exceptions, and special rules hereinafter stated:

The driver of a vehicle overtaking another vehicle proceeding in the same direction shall pass to the left thereof at a safe distance and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle.

Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle and shall not increase the speed of the overtaken vehicle until completely passed by the overtaking vehicle.

For applicable scheduled fine, see §805.8A, subsection 6, paragraph c
Section not amended; footnote added

321.302 Overtaking on the right.

1. The driver of a vehicle may overtake and pass upon the right of another vehicle which is making or about to make a left turn.

2. The driver of a vehicle may overtake and, allowing sufficient clearance, pass another vehicle proceeding in the same direction either upon the left or upon the right on a roadway with unobstructed pavement of sufficient width for four or more lines of moving traffic when such movement can be made in safety. No person shall drive off the pavement or upon the shoulder of the roadway in overtaking or passing on the right.

3. A person convicted of a violation of this sec-

tion is guilty of a simple misdemeanor punishable as a scheduled violation under section 805.8A, subsection 6, paragraph "d".

2001 Acts, ch 137, §5

Unnumbered paragraphs 1 – 3 editorially designated as subsections 1 – 3

Internal reference change applied

321.303 Limitations on overtaking on the left.

A vehicle shall not be driven to the left side of the center of the roadway in overtaking and passing another vehicle proceeding in the same direction unless the left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit the overtaking and passing to be completely made without interfering with the safe operation of a vehicle approaching from the opposite direction or a vehicle overtaken. The overtaking vehicle shall return to the right-hand side of the roadway before coming within three hundred feet of a vehicle approaching from the opposite direction when traveling on a roadway having a legal speed limit in excess of thirty miles per hour, and the overtaking vehicle shall return to the right-hand side of the roadway before coming within one hundred feet of a vehicle approaching from the opposite direction when traveling on a roadway having a legal speed limit of thirty miles per hour or less.

For applicable scheduled fine, see §805.8A, subsection 6, paragraph c
Section not amended; footnote added

321.304 Prohibited passing.

No vehicle shall, in overtaking and passing another vehicle or at any other time, be driven to the left side of the roadway under the following conditions:

1. When approaching the crest of a grade or upon a curve in the highway where the driver's view along the highway is obstructed for a distance of approximately seven hundred feet.

2. When approaching within one hundred feet of any narrow bridge, viaduct, or tunnel, when so signposted, or when approaching within one hundred feet of or traversing any intersection or railroad grade crossing.

3. Where official signs are in place directing that traffic keep to the right or a distinctive center line or off-center line is marked, which distinctive line also so directs traffic as declared in the sign manual adopted by the department of transportation.

For applicable scheduled fine, see §805.8A, subsection 6, paragraph c, and subsection 8

Section not amended; footnote added

321.305 One-way roadways and rotary traffic islands.

1. Upon a roadway designated and signposted for one-way traffic a vehicle shall be driven only in the direction designated.

2. A vehicle passing around a rotary traffic is-

land shall be driven only to the right of such island.

For applicable scheduled fine, see §805.8A, subsection 6, paragraph c
Unnumbered paragraphs 1 and 2 editorially designated as subsections
1 and 2

Section not amended; footnote added

321.306 Roadways laned for traffic.

Whenever any roadway has been divided into three or more clearly marked lanes for traffic the following rules in addition to all others consistent herewith shall apply:

A vehicle shall be driven as nearly as practical entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.

Upon a roadway which is divided into three lanes a vehicle shall not be driven in the center lane except when overtaking and passing another vehicle where the roadway is clearly visible and such center lane is clear of traffic within a safe distance, or in preparation for a left turn or where such center lane is at the time allocated exclusively to traffic moving in the direction the vehicle is proceeding and is signposted to give notice of such allocation.

Official signs may be erected directing slow-moving traffic to use a designated lane or allocating specified lanes to traffic moving in the same direction and drivers of vehicles shall obey the directions of every such sign.

Vehicles moving in a lane designated for slow-moving traffic shall yield the right of way to vehicles moving in the same direction in a lane not so designated when such lanes merge to form a single lane.

A portion of a highway provided with a lane for slow-moving vehicles does not become a roadway marked for three lanes of traffic.

For applicable scheduled fine, see §805.8A, subsection 6, paragraph c
Section not amended; footnote added

321.307 Following too closely.

The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway.

For applicable scheduled fine, see §805.8A, subsection 7, paragraph b
Section not amended; footnote added

321.308 Motor trucks and towed vehicles — distance requirements.

The driver of any motor truck, or of a motor vehicle drawing another vehicle, when traveling upon a roadway, outside of a business or residence district shall not follow within three hundred feet of another motor truck, or of a motor vehicle drawing another vehicle. The provisions of this section shall not be construed to prevent overtaking and passing nor shall the same apply upon any lane

specially designated for use by motor trucks.

For applicable scheduled fine, see §805.8A, subsection 7, paragraph b
Section not amended; footnote added

321.309 Towing — convoys.

1. A person shall not pull or tow by motor vehicle, for hire, another motor vehicle over any highway outside the limits of any incorporated city, except in case of temporary movement of a disabled motor vehicle to the place where repairs will be made, unless the person has complied with the provisions of sections 321.57 and 321.58. Provided, however, if the person is a nonresident of the state of Iowa and has complied with the laws of the state of that person's residence governing licensing and registration as a transporter of motor vehicles, the person shall not be required to pay the fee provided in section 321.58 but only to submit proof of the person's status as a bona fide manufacturer or transporter as may reasonably be required by the department.

2. A person pulling or towing by motor vehicle another motor vehicle in convoy or caravan shall maintain a distance of at least five hundred feet between the units of the convoy or caravan.

For applicable scheduled fines, see §805.8A, subsection 12, paragraph a
Unnumbered paragraphs 1 and 2 editorially designated as subsections
1 and 2

Section not amended; footnote added

321.310 Towing four-wheeled trailers.

1. A motor vehicle shall not tow a four-wheeled trailer with a steering axle, or more than one trailer or semitrailer, or both in combination. However, this section does not apply to a motor home, multipurpose vehicle, motor truck, truck tractor or road tractor nor to a farm tractor towing a four-wheeled trailer, nor to a farm tractor or motor vehicle towing implements of husbandry, nor to a wagon box trailer used by a farmer in transporting produce, farm products or supplies hauled to and from market.

2. Any four-wheeled trailer towed by a truck tractor or road tractor shall be registered under the semitrailer provisions of section 321.122, provided, however, that the provisions of this section shall not be applicable to motor vehicles drawing wagon box trailers used by a farmer in transporting produce, farm products or supplies hauled to and from market.

For applicable scheduled fines, see §805.8A, subsection 12, paragraph a
Unnumbered paragraphs 1 and 2 editorially designated as subsections
1 and 2

Section not amended; footnote added

321.311 Turning at intersections.

1. The driver of a vehicle intending to turn at an intersection shall do so as follows:

a. Both the approach for a right turn and right turn shall be made as close as practical to the right-hand curb or edge of the roadway.

b. Approach for a left turn shall be made in that portion of the right half of the roadway nearest the center line thereof and after entering the

intersection the left turn shall be made so as to depart from the intersection to the right of the center line of the roadway being entered.

c. Approach for a left turn from a two-way street into a one-way street shall be made in that portion of the right half of the roadway nearest the center line thereof and by passing to the right of such center line where it enters the intersection. A left turn from a one-way street into two-way street shall be made by passing to the right of the center line of the street being entered upon leaving the intersection.

2. Local authorities in their respective jurisdictions may cause markers, buttons, or signs to be placed within or adjacent to intersections and thereby require and direct that a different course from that specified in this section be traveled by vehicles turning at an intersection, and when markers, buttons, or signs are so placed no driver of a vehicle shall turn a vehicle at an intersection other than as directed and required by such markers, buttons, or signs.

For applicable scheduled fine, see §805.8A, subsection 6, paragraph c
Section numbered editorially
Section not amended; footnote added

321.312 Turning on curve or crest of grade.

No vehicle shall be turned so as to proceed in the opposite direction upon any curve, or upon the approach to, or near the crest of a grade or hill, where such vehicle cannot be seen by the driver of any other vehicle approaching from either direction within five hundred feet.

For applicable scheduled fine, see §805.8A, subsection 6, paragraph c
Section not amended; footnote added

321.313 Starting parked vehicle.

No person shall start a vehicle which is stopped, standing, or parked unless and until such movement can be made with reasonable safety.

For applicable scheduled fine, see §805.8A, subsection 7, paragraph b
Section not amended; footnote added

321.314 When signal required.

No person shall turn a vehicle from a direct course upon a highway unless and until such movement can be made with reasonable safety and then only after giving a clearly audible signal by sounding the horn if any pedestrian may be affected by such movement or after giving an appropriate signal in the manner hereinafter provided in the event any other vehicle may be affected by such movement.

For applicable scheduled fine, see §805.8A, subsection 6, paragraph c
Section not amended; footnote added

321.315 Signal continuous.

A signal of intention to turn right or left shall be given continuously during not less than the last one hundred feet traveled by the vehicle before turning when the speed limit is forty-five miles per

hour or less and a continuous signal during not less than the last three hundred feet when the speed limit is in excess of forty-five miles per hour.

For applicable scheduled fine, see §805.8A, subsection 6, paragraph b
Section not amended; footnote added

321.316 Stopping.

No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided herein to the driver of any vehicle immediately to the rear when there is opportunity to give such signal.

For applicable scheduled fine, see §805.8A, subsection 6, paragraph b
Section not amended; footnote added

321.317 Signals by hand and arm or signal device.

1. The signals required under the provisions of this chapter may be given either by means of the hand and arm as provided in section 321.318, or by a mechanical or electrical directional signal device or light conforming to the provisions of this chapter.

2. Directional signal devices shall be designed with a white, yellow or amber lamp or lamps to be displayed on the front of vehicles and with a lamp or lamps of red, yellow or amber to be displayed on the rear of vehicles. Such devices shall be capable of clearly indicating any intention to turn either to the right or to the left and shall be visible and understandable during both daylight and darkness from a distance of at least one hundred feet from the front and rear of a vehicle equipped therewith.

3. It is unlawful for any person to sell or offer for sale or operate on the highways of the state any vehicle subject to registration under the provisions of this chapter which has never been registered in this or any other state prior to January 1, 1954, unless the vehicle is equipped with a directional signal device of a type in compliance with the provisions of subsection 2. Motorcycles, motorized bicycles, and semitrailers and trailers less than forty inches in width are exempt from the provisions of this section.

4. When a vehicle is equipped with a directional signal device, such device shall at all times be maintained in good working condition. No directional signal device shall project a glaring or dazzling light. All directional signal devices shall be self-illuminated when in use while other lamps on the vehicle are lighted.

5. Whenever any vehicle or combination of vehicles is disabled or for other reason may present a vehicular traffic hazard requiring unusual care in approaching, overtaking or passing, the operator then may display on the vehicle or combination of vehicles four directional signals of a type complying with the provisions of this section relating to directional signal devices in simultaneous operation.

For applicable scheduled fines, see §805.8A, subsection 3, paragraph a
Section not amended; footnote added

321.318 Method of giving hand and arm signals.

All signals herein required which may be given by hand and arm shall when so given be given from the left side of the vehicle and the following manner and interpretation thereof is suggested:

1. Left turn — Hand and arm extended horizontally.
2. Right turn — Hand and arm extended upward.
3. Stop or decrease of speed — Hand and arm extended downward.

For applicable scheduled fine, see §805.8A, subsection 6, paragraph b
Section not amended; footnote added

321.319 Entering intersections from different highways.

When two vehicles enter an intersection from different highways or public streets at approximately the same time, the driver of the vehicle on the left shall yield the right of way to the vehicle on the right.

The foregoing rule is modified at through highways and otherwise as hereinafter stated in this chapter.

For applicable scheduled fine, see §805.8A, subsection 7, paragraph b
Section not amended; footnote added

321.320 Left turns — yielding.

The driver of a vehicle intending to turn to the left within an intersection or into an alley, private road or driveway shall yield the right of way to all vehicles approaching from the opposite direction which are within the intersection or so close thereto as to constitute an immediate hazard, then said driver, having so yielded and having given a signal when and as required by this chapter, may make such left turn.

For applicable scheduled fine, see §805.8A, subsection 7, paragraph b
Section not amended; footnote added

321.321 Entering through highways.

The driver of a vehicle shall stop or yield as required by this chapter at the entrance to a through highway and shall yield the right of way to other vehicles which have entered the intersection from said through highway or which are approaching so closely on said through highway as to constitute a hazard, but said driver having so yielded may proceed cautiously and with due care enter said through highway.

For applicable scheduled fine, see §805.8A, subsection 7, paragraph b
Section not amended; footnote added

321.322 Vehicles entering stop or yield intersection.

1. The driver of a vehicle approaching a stop intersection indicated by a stop sign shall stop at the first opportunity at either the clearly marked stop line or before entering the crosswalk or before entering the intersection or at the point nearest the intersecting roadway where the driver has a

view of approaching traffic on the intersecting roadway before entering the intersection. Before proceeding, the driver shall yield the right of way to any vehicle on the intersecting roadway which has entered the intersection or which is approaching so closely as to constitute an immediate hazard during the time the driver is moving across or within the intersection.

2. The driver of a vehicle approaching a yield sign shall slow to a speed reasonable for the existing conditions and, if required for safety, shall stop at the first opportunity at either the clearly marked stop line or before entering the crosswalk or before entering the intersection or at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway. After slowing or stopping, the driver shall yield the right of way to any vehicle on the intersecting roadway which has entered the intersection or which is approaching so closely as to constitute an immediate hazard during the time the driver is moving across or within the intersection.

For applicable scheduled fines, see §805.8A, subsection 8
Section not amended; footnote added

321.323 Moving vehicle backward on highway.

A person shall not cause a vehicle to be moved in a backward direction on a highway unless and until the vehicle can be backed with reasonable safety, and shall yield the right of way to any approaching vehicle on the highway or an intersecting highway which is so close as to constitute an immediate hazard.

For applicable scheduled fine, see §805.8A, subsection 6, paragraph c
Section not amended; footnote added

321.324 Operation on approach of emergency vehicles.

Upon the immediate approach of an authorized emergency vehicle with any lamp or device displaying a red light or red and blue lights, or an authorized emergency vehicle of a fire department displaying a blue light, or when the driver is giving audible signal by siren, exhaust whistle, or bell, the driver of every other vehicle shall yield the right-of-way and shall immediately drive to a position parallel to, and as close as possible to, the right hand edge or curb of the highway clear of any intersection and shall stop and remain in such position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer. For the purposes of this section, “red light” or “blue light” means a light or lighting device that, when illuminated, will exhibit a solid flashing or strobing red or blue light.

Upon the approach of an authorized emergency vehicle, as above stated, the driver of every street-car shall immediately stop such car clear of any intersection and keep it in such position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer.

This section shall not operate to relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway.

See also §321.231

For applicable scheduled fines, see §805.8A, subsection 11, paragraph b
Section not amended; footnote added

321.325 Pedestrians subject to signals.

Pedestrians shall be subject to traffic-control signals at intersections as heretofore declared in this chapter, but at all other places pedestrians shall be accorded the privileges and shall be subject to the restrictions stated in sections 321.327 to 321.331.

For applicable scheduled fine, see §805.8A, subsection 9
Section not amended; footnote added

321.326 Pedestrians on left.

Pedestrians shall at all times when walking on or along a highway, walk on the left side of such highway.

For applicable scheduled fine, see §805.8A, subsection 9
Section not amended; footnote added

321.327 Pedestrians' right-of-way.

Where traffic-control signals are not in place or in operation the driver of a vehicle shall yield the right-of-way, slowing down or stopping if need be to so yield, to a pedestrian crossing the roadway within any marked crosswalk or within any unmarked crosswalk at an intersection, except as otherwise provided in this chapter.

A person convicted of a violation of this section is guilty of a simple misdemeanor punishable as a scheduled violation under section 805.8A, subsection 7, paragraph "b".

2001 Acts, ch 137, §5

Internal reference change applied

321.328 Crossing at other than crosswalk.

1. Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway except that cities may restrict such a crossing by ordinance.

2. Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right-of-way to all vehicles upon the roadway.

3. Where traffic-control signals are in operation at any place not an intersection pedestrians shall not cross at any place except in a marked crosswalk.

For applicable scheduled fines, see §805.8A, subsection 9

Unnumbered paragraphs 1 – 3 editorially designated as subsections 1 – 3

Section not amended; footnote added

321.329 Duty of driver — pedestrians crossing or working on highways.

1. Notwithstanding the provisions of section

321.328 every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway and shall give warning by sounding the horn when necessary and shall exercise due care upon observing any child or any confused or incapacitated person upon a roadway.

2. Every driver of a vehicle shall yield the right-of-way to pedestrian workers engaged in maintenance or construction work on a highway whenever the driver is notified of the presence of such workers by a flagman or a warning sign.

For applicable scheduled fine, see §805.8A, subsection 7, paragraph b
Unnumbered paragraphs 1 and 2 editorially designated as subsections 1 and 2

Section not amended; footnote added

321.331 Pedestrians soliciting rides.

1. No person shall stand in a roadway for the purpose of soliciting a ride from the driver of any private vehicle.

2. Nothing in this section or this chapter shall be construed so as to prevent any pedestrian from standing on that portion of the highway or roadway, not ordinarily used for vehicular traffic, for the purpose of soliciting a ride from the driver of any vehicle.

For applicable scheduled fines, see §805.8A, subsection 9
Unnumbered paragraphs 1 and 2 editorially designated as subsections 1 and 2

Section not amended; footnote added

321.332 White canes restricted to blind persons.

For the purpose of guarding against accidents in traffic on the public thoroughfares, it shall be unlawful for any person except persons wholly or partially blind to carry or use on the streets, highways, and public places of the state any white canes or walking sticks which are white in color or white tipped with red.

For applicable scheduled fine, see §805.8A, subsection 9

Section not amended; footnote added

321.333 Duty of drivers.

Any driver of a vehicle or operator of a motor-driven vehicle who approaches or comes in contact with a person wholly or partially blind carrying a cane or walking stick white in color or white tipped with red, or being led by a guide dog wearing a harness and walking on either side of or slightly in front of said blind person, shall immediately come to a complete stop, and take such precautions as may be necessary to avoid accident or injury to the person carrying a cane or walking stick white in color or white tipped with red or being led by a guide dog.

For applicable scheduled fine, see §805.8A, subsection 7, paragraph b

Section not amended; footnote added

321.340 Driving through safety zone.

No vehicle shall at any time be driven through or within a safety zone.

For applicable scheduled fine, see §805.8A, subsection 6, paragraph c

Section not amended; footnote added

321.341 Obedience to signal of train.

1. When a person driving a vehicle approaches a railroad grade crossing and warning is given by automatic signal, crossing gates, a flag person, or otherwise of the immediate approach of a train, the driver of the vehicle shall stop within fifty feet but not less than fifteen feet from the nearest rail and shall not proceed until the driver can do so safely.

2. The driver of a vehicle shall stop and remain standing and not traverse such a grade crossing when a crossing gate is lowered or when a human flagman gives or continues to give a signal of the approach or passage of a train.

For applicable scheduled fines, see §805.8A, subsection 14, paragraph h Unnumbered paragraphs 1 and 2 editorially designated as subsections 1 and 2

Section not amended; footnote added

321.342 Stop at certain railroad crossings — posting warning.

1. The driver of any vehicle approaching a railroad grade crossing across which traffic is regulated by a stop sign, a railroad sign directing traffic to stop or an official traffic control signal displaying a flashing red or steady circular red colored light shall stop prior to crossing the railroad at the first opportunity at either the clearly marked stop line or at a point near the crossing where the driver has a clear view of the approaching railroad traffic.

2. The department, city or county shall be required to post the standard sign as prescribed by the manual on uniform traffic-control devices adopted by the department pursuant to section 321.252 in advance of each railroad grade crossing to warn the motorist that the motorist is approaching a railroad grade crossing. Upon properly posting all railroad grade crossings within its jurisdiction and upon implementing the standards established in accordance with section 307.26, the department, city, or county shall not have any other affirmative duty to warn a motor vehicle operator approaching or at the railroad grade crossing.

For applicable scheduled fines, see §805.8A, subsection 14, paragraph h Unnumbered paragraphs 1 and 2 editorially designated as subsections 1 and 2

Section not amended; footnote added

321.343 Certain vehicles must stop.

1. The driver of a motor vehicle carrying passengers for hire, a school bus, or a vehicle carrying hazardous material and required to stop before crossing a railroad track by motor carrier safety rules adopted under section 321.449, before crossing at grade any track of a railroad, shall stop the vehicle within fifty feet but not less than fifteen feet from the nearest rail. While stopped, the driver shall listen and look in both directions for an approaching train, and for signals indicating the approach of a train, and shall not proceed until the driver can do so safely.

2. The driver of a commercial motor vehicle shall comply with all of the following provisions that apply to the driver:

a. If the driver is not always required to stop at a railroad crossing, slow down when approaching the crossing and check that the railroad tracks are clear of an approaching train before proceeding.

b. If the driver is not always required to stop at a railroad crossing, stop before reaching the crossing if the railroad tracks are not clear.

c. Refrain from proceeding through a railroad crossing if sufficient space is not available to drive completely through the crossing without stopping.

d. Obey a traffic-control device or the directions of an enforcement official at a railroad crossing.

e. Have sufficient undercarriage clearance before negotiating a railroad crossing.

3. No stop need be made at a crossing where a peace officer or a traffic-control device directs traffic to proceed. No stop need be made at a crossing designated by an “exempt” sign. An “exempt” sign shall be posted only where the tracks have been partially removed on either side of the roadway.

2001 Acts, ch 132, §10

For applicable scheduled fines, see §805.8A, subsection 14, paragraph h Section amended

321.344 Heavy equipment at crossing.

1. No person shall operate or move any caterpillar tractor, steam shovel, derrick, roller, or any equipment or structure having a normal operating speed of six or less miles per hour or a vertical body or load clearance of less than nine inches above the level surface of a roadway upon or across any tracks at a railroad grade crossing without first complying with this section.

2. Notice of any such intended crossing shall be given to a superintendent of such railroad and a reasonable time be given to such railroad to provide proper protection at such crossing.

3. Before making any such crossing the person operating or moving any such vehicle or equipment shall first stop the same not less than ten feet nor more than fifty feet from the nearest rail of such railway and while so stopped shall listen and look in both directions along such track for any approaching train and for signals indicating the approach of a train, and shall not proceed until the crossing can be made safely.

4. No such crossing shall be made when warning is given by automatic signal or crossing gates or a flagman or otherwise of the immediate approach of a railroad train or car.

For applicable scheduled fines, see §805.8A, subsection 14, paragraph h Unnumbered paragraphs 1 – 4 editorially designated as subsections 1 – 4

Section not amended; footnote added

321.344B Immediate safety threat — penalty.

A violation of section 321.341, 321.342, 321.343, or 321.344 which creates an immediate threat to

the safety of a person or property is a simple misdemeanor punishable as a scheduled violation under section 805.8A, subsection 14, paragraph “h”.

2001 Acts, ch 137, §5

Internal reference change applied

321.353 Stop before crossing sidewalk — right-of-way.

1. The driver of a vehicle emerging from a private roadway, alley, driveway, or building shall stop such vehicle immediately prior to driving onto the sidewalk area and thereafter the driver shall proceed into the sidewalk area only when the driver can do so without danger to pedestrian traffic and the driver shall yield the right-of-way to any vehicular traffic on the street into which the driver’s vehicle is entering.

2. The driver of a vehicle about to enter or cross a highway from a private road or driveway shall stop such vehicle immediately prior to driving on said highway and shall yield the right-of-way to all vehicles approaching on said highway.

For applicable scheduled fine, see §805.8A, subsection 6, paragraph c
Unnumbered paragraphs 1 and 2 editorially designated as subsections 1 and 2

Section not amended; footnote added

321.354 Stopping on traveled way.

Upon any highway outside of a business district, rural residence district or residence district a person shall not stop, park, or leave standing a vehicle, whether attended or unattended:

1. Upon the paved part of the highway when it is practical to stop, park, or leave the vehicle off that part of the highway, however, a clear and unobstructed width of at least twenty feet of the paved part of the highway opposite the standing vehicle shall be left for the free passage of other vehicles. As used in this subsection, “paved highway” includes an asphalt surfaced highway.

2. Upon the main traveled part of a highway other than a paved highway when it is practical to stop, park, or leave the vehicle off that part of the highway. However, a clear and unobstructed width of that part of the highway opposite the standing vehicle shall be left to allow for the free passage of other vehicles.

A clear view of the stopped vehicle shall be available from a distance of two hundred feet in each direction upon the highway. However, school buses may stop on the highway for receiving and discharging pupils and all other vehicles shall stop for school buses which are stopped to receive or discharge pupils, as provided in section 321.372. This section does not apply to a vehicle making a turn as provided in section 321.311. This section also does not apply to the stopping or parking of a maintenance vehicle operated by a highway authority on the main traveled way of any roadway when necessary to the function being performed and when early warning devices are properly dis-

played.

For applicable scheduled fine, see §805.8A, subsection 6, paragraph c
Section not amended; footnote added

321.358 Stopping, standing or parking.

No person shall stop, stand, or park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic-control device, in any of the following places:

1. On a sidewalk, except a bicycle may stop, stand, or park on a sidewalk if not prohibited by a local jurisdiction.

2. In front of a public or private driveway.

3. Within an intersection.

4. Within five feet of a fire hydrant.

5. On a crosswalk.

6. Within ten feet upon the approach to any flashing beacon, stop sign, or traffic-control signal located at the side of a roadway.

7. Between a safety zone and the adjacent curb or within ten feet of points on the curb immediately opposite the ends of a safety zone, unless any city indicates a different length by signs or markings.

8. Within fifty feet of the nearest rail of a railroad crossing, except when parked parallel with such rail and not exhibiting a red light.

9. Within twenty feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within seventy-five feet of said entrance when properly signposted.

10. Alongside or opposite any street excavation or obstruction when such stopping, standing, or parking would obstruct traffic.

11. On the roadway side of any vehicle stopped or parked at the edge or curb of a street.

12. Upon any bridge or other elevated structure upon a highway outside of cities or within a highway tunnel.

13. At any place where official signs prohibit stopping or parking.

14. Upon any street within the corporate limits of a city when the same is prohibited by a general ordinance of uniform application relating to removal of snow or ice from the streets.

15. In front of a curb cut or ramp which is located on public or private property in a manner which blocks access to the curb cut or ramp.

For fines applicable to offenses charged as scheduled violations, see §805.8A, subsection 1, paragraph a
Section not amended; footnote added

321.360 Theaters, hotels and auditoriums.

A space of not to exceed fifty feet is hereby reserved at the side of the street in front of any theater, auditorium, hotel having more than twenty-five sleeping rooms, or other buildings where large assemblages of people are being held, within which space, when clearly marked as such, no motor vehicle shall be left standing, parked, or

stopped except in taking on or discharging passengers or freight, and then only for such length of time as is necessary for such purpose.

For applicable scheduled fine, see §805.8A, subsection 1, paragraph a
Section not amended; footnote added

321.361 Additional parking regulations.

1. Except as otherwise provided in this section every vehicle stopped or parked upon a roadway where there are adjacent curbs shall be so stopped or parked with the right-hand wheels of such vehicle parallel to and within eighteen inches of the right-hand curb.

2. Local authorities may by ordinance permit parking of vehicles with the left-hand wheels adjacent to and within eighteen inches of the left-hand curb of a one-way roadway.

3. Local authorities may by ordinance permit angle or center parking on any roadway under their jurisdiction.

For fines applicable to offenses charged as scheduled violations, see §805.8A, subsection 1, paragraph a

Unnumbered paragraphs 1 – 3 editorially designated as subsections 1

– 3

Section not amended; footnote added

321.362 Unattended motor vehicle.

No person driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine, or when standing upon any perceptible grade without effectively setting the brake thereon and turning the front wheels to the curb or side of the highway.

For applicable scheduled fine, see §805.8A, subsection 1, paragraph a
Section not amended; footnote added

321.363 Obstruction to driver's view.

1. No person shall drive a vehicle when it is so loaded, or when there are in the front seat such number of persons, exceeding three, as to obstruct the view of the driver to the front or sides of the vehicle or as to interfere with the driver's control over the driving mechanism of the vehicle.

2. No passenger in a vehicle shall ride in such position as to interfere with the driver's view ahead or to the sides, or to interfere with the driver's control over the driving mechanism of the vehicle.

For applicable scheduled fine, see §805.8A, subsection 6, paragraph b
Unnumbered paragraphs 1 and 2 editorially designated as subsections 1 and 2

Section not amended; footnote added

321.364 Preventing contamination of food by hazardous material.

Food intended for human consumption shall not be shipped in a vehicle or container which has been used to transport a hazardous material unless the vehicle or container has been purged of any hazardous material or the transportation is made in a manner that prevents any contact between the food and the hazardous material.

For applicable scheduled fine, see §805.8A, subsection 13, paragraph c
Section not amended; footnote added

321.365 Coasting prohibited.

The driver of a motor vehicle shall not drive with the source of motive power disengaged from the driving wheels except when disengagement is necessary to stop or to shift gears.

For applicable scheduled fine, see §805.8A, subsection 6, paragraph b
Section not amended; footnote added

321.366 Acts prohibited on fully controlled-access facilities.

It is unlawful for a person, except a person operating highway maintenance equipment or an authorized emergency vehicle, to do any of the following on a fully controlled-access facility:

1. Drive a vehicle over, upon, or across a curb, central dividing section, or other separation or dividing line.

2. Make a left turn or a semicircular or U-turn at a maintenance cross-over where an official sign prohibits the turn.

3. Drive a vehicle except in the proper lane provided for that purpose and in the proper direction and to the right of the central dividing curb, separation, section, or line.

4. Drive a vehicle into the facility from a local service road.

5. Stop, park, or leave standing a vehicle, whether attended or unattended, upon the paved portion.

6. Stop, park, or leave standing a vehicle, whether attended or unattended, upon the shoulders, or the right of way except at designated rest areas or in case of an emergency or other dire necessity.

For the purpose of this section, fully controlled-access facility is a highway which gives preference to through traffic by providing access connections at interchanges with selected public roads only and by prohibiting crossings at grade or direct access at driveway connections.

Violations of this section are punishable as a scheduled violation under section 805.8A, subsection 6, paragraph "d".

2001 Acts, ch 137, §5

Internal reference change applied

321.367 Following fire apparatus.

The driver of any vehicle other than one on official business shall not follow any fire apparatus traveling in response to a fire alarm closer than five hundred feet or drive into or park such vehicle within the block where fire apparatus has stopped in answer to a fire alarm.

For applicable scheduled fine, see §805.8A, subsection 11, paragraph a
Section not amended; footnote added

321.368 Crossing fire hose.

No vehicle shall be driven over any unprotected hose of a fire department when laid down on any street, private driveway, or streetcar track, to be used at any fire or alarm of fire, without the consent of the fire department official in command.

For applicable scheduled fine, see §805.8A, subsection 11, paragraph a
Section not amended; footnote added

321.369 Putting debris on highway.

A person shall not throw or deposit upon a highway any glass bottle, glass, nails, tacks, wire, cans, trash, garbage, rubbish, litter, offal, or any other debris. A person shall not throw or deposit upon a highway a substance likely to injure any person, animal, or vehicle upon the highway. A person who violates this section or section 321.370 commits a misdemeanor punishable as a scheduled violation under section 805.8A, subsection 14, paragraph “d”.

2001 Acts, ch 137, §5

Internal reference change applied

321.370 Removing injurious material.

Any person who drops, or permits to be dropped or thrown, upon any highway any destructive or injurious material and other material as defined in section 321.369 shall immediately remove the same or cause it to be removed.

For applicable scheduled fines, see §805.8A, subsection 14, paragraph d
Section not amended; footnote added

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 re-

quired 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.

For applicable scheduled fines, see §805.8A, subsection 10
Section not amended; footnote added

321.381 Movement of unsafe or improperly equipped vehicles.

It is a simple misdemeanor punishable as a scheduled violation under section 805.8A, subsection 3, paragraph “f”, for any person to drive or move or for the owner to cause or knowingly permit to be driven or moved on any highway any vehicle or combination of vehicles which is in such unsafe condition as to endanger any person, or which does not contain those parts or is not at all times equipped with such lamps and other equipment in proper condition and adjustment as required in this chapter, or which is equipped with

one or more unsafe tires or which is equipped in any manner in violation of this chapter.

2001 Acts, ch 137, §5
Internal reference change applied

321.381A Operation of low-speed vehicles.

A low-speed vehicle shall not be operated on a street with a posted speed limit greater than thirty-five miles per hour. This section shall not prohibit a low-speed vehicle from crossing a street with a posted speed limit greater than thirty-five miles per hour.

For applicable scheduled fine, see §805.8A, subsection 3, paragraph f
Section not amended; footnote added

321.382 Upgrade pulls — minimum speed.

A motor vehicle or combination of vehicles, which cannot proceed up a three percent grade, on dry concrete pavement, at a minimum speed of twenty miles per hour, shall not be operated upon the highways of this state.

For applicable scheduled fine, see §805.8A, subsection 3, paragraph c
Section not amended; footnote added

321.383 Exceptions — slow vehicles identified.

1. This chapter with respect to equipment on vehicles does not apply to implements of husbandry, road machinery, or bulk spreaders and other fertilizer and chemical equipment defined as special mobile equipment, except as made applicable in this section. However, the movement of implements of husbandry on a roadway is subject to safety rules adopted by the department. The safety rules shall prohibit the movement of any power unit towing more than one implement of husbandry from the manufacturer to the retail seller, from the retail seller to the farm purchaser, or from the manufacturer to the farm purchaser.

2. When operated on a highway in this state at a speed of thirty-five miles per hour or less, every farm tractor, or tractor with towed equipment, self-propelled implement of husbandry, road construction or maintenance vehicle, road grader, horse-drawn vehicle, or any other vehicle principally designed for use off the highway and any such tractor, implement, vehicle, or grader when manufactured for sale or sold at retail after December 31, 1971, shall be identified with a reflective device in accordance with the standards of the American society of agricultural engineers; however, this provision shall not apply to such vehicles when traveling in an escorted parade. If a person operating a vehicle drawn by a horse or mule objects to using a reflective device that complies with the standards of the American society of agricultural engineers for religious reasons, the vehicle may be identified by an alternative reflective device that is in compliance with rules adopted by the department. The reflective device or alterna-

tive reflective device shall be visible from the rear. A vehicle other than those specified in this section shall not display a reflective device or an alternative reflective device. On vehicles operating at speeds above thirty-five miles per hour, the reflective device or alternative reflective device shall be removed or hidden from view.

3. Garbage collection vehicles, when operated on the streets or highways of this state at speeds of thirty-five miles per hour or less, may display a reflective device that complies with the standards of the American society of agricultural engineers. At speeds in excess of thirty-five miles per hour the device shall not be visible.

Any person who violates any provision of this section shall be fined as provided in section 805.8A, subsection 3, paragraph "d".

2001 Acts, ch 137, §5
Internal reference change applied

321.384 When lighted lamps required.

1. Every motor vehicle upon a highway within the state, at any time from sunset to sunrise, and at such other times when conditions such as fog, snow, sleet, or rain provide insufficient lighting to render clearly discernible persons and vehicles on the highway at a distance of five hundred feet ahead, shall display lighted head lamps as provided in section 321.415, subject to exceptions with respect to parked vehicles as hereinafter stated.

2. Whenever requirement is hereinafter declared as to the distance from which certain lamps and devices shall render objects visible or within which such lamps or devices shall be visible, said provisions shall apply during the times stated in subsection 1 of this section upon a straight level unlighted highway under normal atmospheric conditions unless a different time or condition is expressly stated.

For applicable scheduled fine, see §805.8A, subsection 3, paragraph d
Section not amended; footnote added

321.385 Head lamps on motor vehicles.

Every motor vehicle other than a motorcycle or motorized bicycle shall be equipped with at least two head lamps with at least one on each side of the front of the motor vehicle, which head lamps shall comply with the requirements and limitations set forth in this chapter.

For applicable scheduled fine, see §805.8A, subsection 3, paragraph d
Section not amended; footnote added

321.386 Head lamps on motorcycles and motorized bicycles.

Every motorcycle and motorized bicycle shall be equipped with at least one and not more than two head lamps which shall comply with the requirements and limitations of this chapter.

For applicable scheduled fine, see §805.8A, subsection 3, paragraph a
Section not amended; footnote added

321.387 Rear lamps.

Every motor vehicle and every vehicle which is

being drawn at the end of a train of vehicles shall be equipped with a lighted rear lamp or lamps, exhibiting a red light plainly visible from a distance of five hundred feet to the rear. All lamps and lighting equipment originally manufactured on a motor vehicle shall be kept in working condition or shall be replaced with equivalent equipment.

For applicable scheduled fine, see §805.8A, subsection 3, paragraph a Section not amended; footnote added

321.388 Illuminating plates.

Either the rear lamp or a separate lamp shall be so constructed and placed as to illuminate with a white light the rear registration plate and render it clearly legible from a distance of fifty feet to the rear. When the rear registration plate is illuminated by an electric lamp other than the required rear lamp, the two lamps shall be turned on or off only by the same control switch at all times when head lamps are lighted.

For applicable scheduled fine, see §805.8A, subsection 3, paragraph a Section not amended; footnote added

321.389 Reflector requirement.

Every new motor vehicle, trailer, or semitrailer hereafter sold and every commercial vehicle hereafter operated on a highway shall also carry at the rear, either as a part of the rear lamp or separately, a red reflector meeting the requirements of this chapter.

For applicable scheduled fine, see §805.8A, subsection 3, paragraph a Section not amended; footnote added

321.390 Reflector requirements.

Whenever a red reflector is required or permitted to be used in substitution of lamps upon a vehicle under any one of the provisions of this chapter, such reflector shall be mounted upon the vehicle at a height not to exceed forty-two inches nor less than twenty inches above the ground upon which the vehicle stands, and every such reflector shall be so designed and maintained as to be visible at night from all distances within three hundred feet to fifty feet from such vehicle, except that on a commercial vehicle the reflector shall be visible from all distances within five hundred feet to fifty feet from such vehicle when directly in front of a motor vehicle displaying lawfully lighted head lamps as provided in section 321.409.

For applicable scheduled fine, see §805.8A, subsection 3, paragraph a Section not amended; footnote added

321.392 Clearance and identification lights.

Every motor truck, and every trailer or semitrailer of over three thousand pounds gross weight, shall be equipped with the following lighting devices and reflectors in addition to other requirements of this chapter, and such devices shall be lighted at the times mentioned in section 321.384.

1. Every motor truck, whatever its size shall

have the following:

On each side, one reflector, at or near the rear; and

On the rear, two reflectors, one at each side.

2. Every motor truck, eighty inches or more in width shall have the following in addition to the requirements of subsection 1:

a. If thirty feet or less in over-all length —

On the front, two clearance lamps, one at each side; and

On the rear, two clearance lamps, one at each side.

b. If more than thirty feet in overall length —

On the front, two clearance lamps, one at each side;

On each side, two side-marker lamps, one at or near the front, and one at or near the rear, and an additional reflector at or near the front; and

On the rear, two clearance lamps, one at each side.

3. Every truck tractor or road tractor shall have the following:

On the front, two clearance lamps, one at each side if the tractor cab is as wide as, or wider than, the widest part of the vehicle or vehicles towed;

On each side, one side-marker lamp at or near the front; and

On the rear, one tail lamp.

4. Every trailer or semitrailer having a gross weight in excess of three thousand pounds shall have the following:

On the front, two clearance lamps, one at each side, if the trailer is wider in its widest part than the cab of the vehicle towing it;

On each side, one side-marker lamp at or near the rear; two reflectors, one at or near the front and one at or near the rear; and

On the rear, two clearance lamps, one at each side; one stop light; one tail lamp; and two reflectors, one at each side.

5. Every motor truck or combination of motor truck and trailer having a length in excess of thirty feet or a width in excess of eighty inches shall be equipped with three identification lights on both front and rear. Each such group shall be evenly spaced not less than six nor more than twelve inches apart along a horizontal line near the top of the vehicle.

For applicable scheduled fine, see §805.8A, subsection 3, paragraph a Section not amended; footnote added

321.393 Color and mounting.

1. A lighting device or reflector, when mounted on or near the front of a motor truck or trailer, except a school bus, shall not display any other color than white, yellow, or amber.

2. No lighting device or reflector, when mounted on or near the rear of any motor truck or trailer, shall display any other color than red, except that the stop light may be red, yellow, or amber.

3. Clearance lamps shall be mounted on the

permanent structure of the vehicle in such manner as to indicate the extreme width of the vehicle or its load.

4. The provisions of this section shall not prohibit the use of a lighting device or reflector displaying an amber light when such lighting device or reflector is mounted on a motor truck, trailer, tractor, or motor grader owned by the state, or any political subdivision of the state, or any municipality therein, while such equipment is being used for snow removal, sanding, maintenance, or repair of the public streets or highways.

For applicable scheduled fines, see §805.8A, subsection 3, paragraph a
Unnumbered paragraphs 1 – 4 editorially designated as subsections 1

– 4

Section not amended; footnote added

321.394 Lamp or flag on projecting load.

Whenever the load upon any vehicle extends to the rear four feet or more beyond the bed or body of such vehicle there shall be displayed at the extreme rear end of the load, at the times specified in section 321.384, a red light or lantern plainly visible from a distance of at least five hundred feet to the sides and rear. The red light or lantern required under this section shall be in addition to the red rear light required upon every vehicle. At any other time there shall be displayed at the extreme rear end of such load a red flag or cloth not less than sixteen inches square.

For applicable scheduled fines, see §805.8A, subsection 12, paragraph a
Section not amended; footnote added

321.395 Lamps on parked vehicles.

Whenever a vehicle is parked or stopped upon a roadway or shoulder adjacent to the roadway, outside of a business district whether attended or unattended during the times mentioned in section 321.384, such vehicle shall be equipped with one or more lamps which shall exhibit a white or amber light on the roadway side visible from a distance of five hundred feet to the front of such vehicle and a red light visible from a distance of five hundred feet to the rear, except that local authorities may provide by ordinance or resolution that no lights need be displayed upon any such vehicle when stopped or parked in accordance with local parking regulations upon a highway where there is sufficient light to reveal any person or object within a distance of five hundred feet upon such highway. Any lighted head lamps upon a parked vehicle shall be depressed or dimmed.

For applicable scheduled fine, see §805.8A, subsection 6, paragraph c
Section not amended; footnote added

321.397 Lamps on bicycles.

Every bicycle shall be equipped with a lamp on the front exhibiting a white light, at the times specified in section 321.384, visible from a distance of at least three hundred feet to the front and with a lamp on the rear exhibiting a red light vis-

ible from a distance of three hundred feet to the rear; except that a red reflector may be used in lieu of a rear light. A peace officer riding a police bicycle is not required to use either front or rear lamps if duty so requires.

For applicable scheduled fine, see §805.8A, subsection 9
Section not amended; footnote added

321.398 Lamps on other vehicles and equipment.

All vehicles, including animal-drawn vehicles and including those referred to in section 321.383 not hereinbefore specifically required to be equipped with lamps, shall at the times specified in section 321.384 be equipped with at least one lighted lamp or lantern exhibiting a white light visible from a distance of five hundred feet to the front of such vehicle and, except for animal-drawn vehicles, with a lamp or lantern exhibiting a red light visible from a distance of five hundred feet to the rear. Animal-drawn vehicles shall be equipped with a flashing amber light visible from a distance of five hundred feet to the rear of the vehicle during the time specified in section 321.384.

For applicable scheduled fines, see §805.8A, subsection 3, paragraph d
Section not amended; footnote added

321.402 Spot lamps.

Any motor vehicle may be equipped with not to exceed one spot lamp and every lighted spot lamp shall be so aimed and used upon approaching another vehicle that no part of the high-intensity portion of the beam will be directed to the left of the prolongation of the extreme left side of the vehicle nor more than one hundred feet ahead of the vehicle.

For applicable scheduled fine, see §805.8A, subsection 3, paragraph d
Section not amended; footnote added

321.403 Auxiliary driving lamps.

Any motor vehicle may be equipped with not to exceed three auxiliary driving lamps mounted on the front at a height not less than twelve inches nor more than forty-two inches above the level surface upon which the vehicle stands, and every such auxiliary driving lamp or lamps shall meet the requirements and limitations set forth in this chapter.

For applicable scheduled fine, see §805.8A, subsection 3, paragraph d
Section not amended; footnote added

321.404 Signal lamps and signal devices.

Every motor vehicle shall be equipped with a signal lamp or signal device which is so constructed and located on the vehicle as to give a signal of intention to stop, which shall be red or yellow in color, which signal shall be plainly visible and understandable in normal sunlight and at night from a distance of one hundred feet to the rear but shall not project a glaring or dazzling light.

For applicable scheduled fine, see §805.8A, subsection 3, paragraph d
Section not amended; footnote added

321.404A Light-restricting devices prohibited.

1. A person shall not operate a motor vehicle, motorcycle, or motorized bicycle on the highways of this state if it is equipped with a device that restricts the light output of a head lamp required under section 321.385 or 321.386, a rear lamp required under section 321.387, a signal lamp or signal device required under section 321.404, or a directional signal device as described in section 321.317.

2. A person who violates this section shall be subject to a scheduled fine under section 805.8A, subsection 3, paragraph “c”.

2001 Acts, ch 137, §5

Internal reference change applied

321.409 Mandatory lighting equipment.

Except as hereinafter provided, the head lamps or the auxiliary driving lamp or the auxiliary passing lamp or combination thereof on motor vehicles other than motorcycles or motorized bicycles shall be so arranged that the driver may select at will between distributions of light projected to different elevations and the lamps may, in addition, be so arranged that selection can be made automatically, subject to the following limitations:

1. There shall be an uppermost distribution of light, or composite beam, so aimed and of sufficient intensity to reveal persons and vehicles at a distance of at least three hundred fifty feet ahead for all conditions.

2. There shall be a lowermost distribution of light, or composite beam so aimed and of sufficient intensity to reveal persons and vehicles at a distance of at least one hundred feet ahead. On a straight level road under any condition of loading none of the high-intensity portion of the beam shall be directed to strike the eyes of an approaching driver.

3. Every new motor vehicle, other than a motorcycle or motorized bicycle which has multiple-beam road-lighting equipment shall be equipped with a beam indicator, which shall be lighted whenever the uppermost distribution of light from the head lamps is in use, and shall not otherwise be lighted. The indicator shall be so designed and located that when lighted it will be readily visible without glare to the driver of the vehicle.

For applicable scheduled fine, see §805.8A, subsection 3, paragraph d
Section not amended; footnote added

321.415 Required usage of lighting devices.

1. Whenever a motor vehicle is being operated on a roadway or shoulder during the times specified in section 321.384, the driver shall use a distribution of light, or composite beam, directed high enough and of sufficient intensity to reveal persons and vehicles at a safe distance in advance of the vehicle, subject to the following requirements

and limitations:

a. Whenever a driver of a vehicle approaches an oncoming vehicle within one thousand feet, the driver shall use a distribution of light, or composite beam, so aimed that the glaring rays are not projected into the eyes of the oncoming driver. The lowermost distribution of light, or composite beam, specified in section 321.409, subsection 2, shall be deemed to avoid glare at all times, regardless of road contour and loading.

b. Whenever the driver of a vehicle follows another vehicle within four hundred feet to the rear, except when engaged in the act of overtaking and passing, the driver shall use a distribution of light permissible under this chapter other than the uppermost distribution of light specified in section 321.409, subsection 1.

2. The provisions of subsection 1, paragraphs “a” and “b”, do not apply to motorcycles or motorized bicycles being operated between sunrise and sunset.

For applicable scheduled fines, see §805.8A, subsection 3, paragraph d
Section renumbered editorially
Section not amended; footnote added

321.419 Number of driving lamps required or permitted.

At all times specified in section 321.384 at least two lighted lamps, except where one only is permitted, shall be displayed, one on each side at the front of every motor vehicle except when such vehicle is parked subject to the regulations governing lights on parked vehicles.

For applicable scheduled fine, see §805.8A, subsection 3, paragraph d
Section not amended; footnote added

321.420 Number of lamps lighted.

Whenever a motor vehicle equipped with head lamps as herein required is also equipped with any auxiliary lamps or a spot lamp or any other lamp on the front thereof projecting a beam of an intensity greater than three hundred candlepower, not more than a total of four of any such lamps on the front of a vehicle shall be lighted at any one time when upon a highway.

For applicable scheduled fine, see §805.8A, subsection 3, paragraph d
Section not amended; footnote added

321.421 Special restrictions on lamps.

Any lighted lamp or illuminating device upon a motor vehicle other than head lamps, spot lamps, or auxiliary driving lamps which projects a beam of light of an intensity greater than three hundred candlepower shall be so directed that no part of the beam will strike the level of the roadway on which the vehicle stands at a distance of more than seventy-five feet from the vehicle.

A person convicted of a violation of this section is guilty of a simple misdemeanor punishable as a scheduled violation under section 805.8A, subsection 3, paragraph “d”.

2001 Acts, ch 137, §5
Internal reference change applied

321.422 Red light in front.

No person shall drive or move any vehicle or equipment upon any highway with any lamp or device thereon displaying or reflecting a red light visible from directly in front thereof. This section shall not apply to authorized emergency vehicles, or school buses and vehicles as provided in section 321.423, subsection 6. No person shall display any color of light other than red on the rear of any vehicle, except that stop lights and directional signals may be red, yellow, or amber.

For applicable scheduled fine, see §805.8A, subsection 3, paragraph A. Section not amended; footnote added

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 response 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.

c. An authorized emergency vehicle, other than a vehicle described in paragraph “a” or “b”, if the blue light is positioned on the passenger side of the vehicle and is used in conjunction with a red light positioned on the driver side of the vehicle.

A person shall not use only a blue light on a vehicle unless the vehicle meets the requirements of paragraph “a” or “b”.

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 response 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 thirty-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 in accordance with 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 response 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 response 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 response 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.

2001 Acts, ch 32, §19

For applicable scheduled fines, see §805.8A, subsection 3, paragraph d
Subsection 6 amended

321.430 Brake, hitch and control requirements.

1. Every motor vehicle, other than a motorcycle, or motorized bicycle, when operated upon a highway shall be equipped with brakes adequate to control the movement of and to stop and hold such vehicle, including two separate means of applying the brakes, each of which means shall be effective to apply the brakes to at least two wheels. If these two separate means of applying the brakes are connected in any way, they shall be so constructed that failure of any one part of the operating mechanism shall not leave the motor vehicle without brakes on at least two wheels.

2. Every motorcycle and motorized bicycle, when operated upon a highway, shall be equipped with at least one brake, which may be operated by hand or foot.

3. Every trailer or semitrailer of a gross weight of three thousand pounds or more, and every trailer coach or travel trailer of a gross weight of three thousand pounds or more intended for use for human habitation, when operated on the highways of this state, shall be equipped with brakes adequate to control the movement of and to stop and hold such vehicle, and so designed as to be applied by the driver of the towing motor vehicle from its cab, or with self-actuating brakes, and weight equalizing hitch with a sway control. Every semitrailer, travel trailer, or trailer coach of a gross weight of three thousand pounds or more shall be equipped with a separate, auxiliary means of applying the brakes on the semitrailer,

travel trailer, or trailer coach from the cab of the towing vehicle. Trailers or semitrailers with a truck or truck tractor need only comply with the brake requirements.

4. Except as otherwise provided in this chapter, every new motor vehicle, trailer, or semitrailer hereafter sold in this state and operated upon the highways shall be equipped with service brakes upon all wheels of every such vehicle with the following exceptions:

a. Any motorcycle or motorized bicycle.

b. Any trailer or semitrailer of less than three thousand pounds gross weight need not be equipped with brakes.

c. Trucks and truck tractors equipped with three or more axles and manufactured before July 25, 1980, need not have brakes on the front wheels, except that such vehicles equipped with two or more front axles shall be equipped with brakes on at least one of the axles; however, the service brakes of the vehicle shall comply with the performance requirements of section 321.431.

d. Only such brakes on the vehicle or vehicles being towed in a driveaway-towaway operation need be operative as may be necessary to insure compliance by the combination of vehicles with the performance requirements of section 321.431. The term “driveaway-towaway” operation as used in this subsection means any operation in which any motor vehicle or motor vehicles, new or used, constitute the commodity being transported, when one set or more of wheels of any such motor vehicle or motor vehicles are on the roadway during the course of transportation, whether or not any such motor vehicle furnishes the motive power.

For applicable scheduled fine, see §805.8A, subsection 3, paragraph e
Section not amended; footnote added

321.432 Horns and warning devices.

Every motor vehicle when operated upon a highway shall be equipped with a horn in good working order and capable of emitting sound audible under normal conditions from a distance of not less than two hundred feet, but no horn or other warning device shall emit an unreasonably loud or harsh sound or a whistle. The driver of a motor vehicle shall when reasonably necessary to insure safe operation give audible warning with the horn but shall not otherwise use such horn when upon a highway.

For applicable scheduled fine, see §805.8A, subsection 3, paragraph a
Section not amended; footnote added

321.433 Sirens, whistles, and bells prohibited.

A vehicle shall not be equipped with and a person shall not use upon a vehicle any siren, whistle, or bell, except as otherwise permitted in this section. It is permissible but not required that any commercial vehicle be equipped with a theft alarm signal device which is so arranged that it cannot

be used by the driver as an ordinary warning signal. Any authorized emergency vehicle may be equipped with a siren, whistle, or bell capable of emitting sound audible under normal conditions from a distance of not less than five hundred feet, but the siren, whistle, or bell shall not be used except when the vehicle is operated in response to an emergency call or in the immediate pursuit of an actual or suspected violator of the law, and the driver of the vehicle shall sound the siren, whistle, or bell when necessary to warn pedestrians and other drivers of the approach of the vehicle.

For applicable scheduled fine, see §805.8A, subsection 3, paragraph d
Section not amended; footnote added

321.434 Bicycle sirens or whistles.

A bicycle shall not be equipped with and a person shall not use upon a bicycle any siren or whistle. This section shall not apply to bicycles ridden by peace officers in the line of duty.

For applicable scheduled fine, see §805.8A, subsection 9
Section not amended; footnote added

321.436 Mufflers, prevention of noise.

Every motor vehicle shall at all times be equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise and annoying smoke, and no person shall use a muffler cutout, by-pass or similar device upon a motor vehicle on a highway.

For applicable scheduled fine, see §805.8A, subsection 3, paragraph a
Section not amended; footnote added

321.437 Mirrors.

1. Every motor vehicle shall be equipped with a mirror so located as to reflect to the driver a view of the highway for a distance of at least two hundred feet to the rear of such vehicle. Any motor vehicle so loaded, or towing another vehicle in such manner, as to obstruct the view in a rear view mirror located in the driver's compartment shall be equipped with a side mirror so located that the view to the rear will not be obstructed however when such vehicle is not loaded or towing another vehicle the side mirrors shall be retracted or removed. All van or van type motor vehicles shall be equipped with outside mirrors of unit magnification, each with not less than nineteen point five square inches of reflective surface, installed with stable supports on both sides of the vehicle, located so as to provide the driver a view to the rear along both sides of the vehicle, and adjustable in both the horizontal and vertical directions to view the rearward scene.

2. Notwithstanding this chapter or chapter 321E, a combination of vehicles coupled together which is used exclusively for the transportation of passenger vehicles, light delivery trucks, panel delivery trucks, pickups, boats, and recreational chassis, may permanently attach a convex-type mirror on either or both of the vertical supports,

forward of the steering axle of the power unit, provided that the mirror shall not extend beyond the limit of any other rearview mirror on the vehicle.

For applicable scheduled fines, see §805.8A, subsection 3, paragraph b, and subsection 12, paragraph b

Unnumbered paragraphs 1 and 2 editorially designated as subsections 1 and 2

Section not amended; footnote added

321.438 Windshields and windows.

1. A person shall not drive a motor vehicle equipped with a windshield, sidewings, or side or rear windows which do not permit clear vision.

2. A person shall not operate on the highway a motor vehicle equipped with a front windshield, a side window to the immediate right or left of the driver, or a side-wing forward of and to the left or right of the driver which is excessively dark or reflective so that it is difficult for a person outside the motor vehicle to see into the motor vehicle through the windshield, window, or sidewing. The department shall adopt rules establishing a minimum measurable standard of transparency which shall apply to violations of this subsection.

3. Every motor vehicle except a motorcycle, or a vehicle included in the provisions of section 321.383 or section 321.115 shall be equipped with a windshield in accordance with section 321.444.

For applicable scheduled fine, see §805.8A, subsection 3, paragraph c
Section not amended; footnote added

321.439 Windshield wipers.

The windshield on every motor vehicle shall be equipped with a device for cleaning rain, snow, or other moisture from the windshield, which device shall be so constructed as to be controlled or operated by the driver of the vehicle.

For applicable scheduled fine, see §805.8A, subsection 3, paragraph a
Section not amended; footnote added

321.440 Restrictions as to tire equipment.

1. Every solid rubber tire on a vehicle shall have rubber on its entire traction surface at least one inch thick above the edge of the flange of the entire periphery. Any pneumatic tire on a vehicle shall be considered unsafe if it has:

- a. Any part of the ply or cord exposed;
- b. Any bump, bulge or separation;
- c. A tread design depth of less than one-sixteenth of an inch measured in any two or more adjacent tread grooves, exclusive of tie bars or, for those tires with tread wear indicators, worn to the level of the tread wear indicators in any two tread grooves;
- d. A marking "not for highway use", "for racing purposes only", "unsafe for highway use";
- e. Tread or sidewall cracks, cuts or snags deep enough to expose the body cord;
- f. Such other conditions as may be reasonably demonstrated to render it unsafe;
- g. Been regrooved or recut below the original tread design depth, excepting special tires which

have extra under tread rubber and are identified as such, or if a pneumatic tire was originally designed without grooves or tread.

2. A vehicle, except an implement of husbandry, equipped with either solid rubber or pneumatic tires shall not be operated where the weight per inch of tire width is greater than five hundred seventy-five pounds per inch of tire width based on the tire width rating, except on a steering axle, in which case six hundred pounds per inch of tire width is permitted based on the tire width rating.

For applicable scheduled fine, see §805.8A, subsection 3, paragraph a
Section editorially renumbered
Section not amended; footnote added

321.441 Metal tires prohibited.

No person shall operate or move on a paved highway any motor vehicle, trailer, or semitrailer having any metal tire or metal track in contact with the roadway.

For applicable scheduled fine, see §805.8A, subsection 3, paragraph a
Section not amended; footnote added

321.442 Projections on wheels.

No tire on a vehicle moved on a highway shall have on its periphery any block, stud, flange, cleat, or spike or any other protuberances of any material other than rubber which projects beyond the tread of the traction surface of the tire except that it shall be permissible to use:

1. Farm machinery with tires having protuberances which will not injure the highway.

2. Tire chains of reasonable proportions upon any vehicle when required for safety because of snow, ice, or other conditions tending to cause a vehicle to skid.

3. Pneumatic tires with inserted ice grips or tire studs projecting not more than one-sixteenth inch beyond the tread of the traction surface of the tire upon any vehicle from November 1 of each year to April 1 of the following year, except that a school bus and fire department emergency apparatus may use such tires at any time.

For applicable scheduled fine, see §805.8A, subsection 3, paragraph a
Section not amended; footnote added

321.444 Safety glass.

1. No person shall sell any new motor vehicle nor shall any motor vehicle, manufactured since July 1, 1935, be registered, or operated unless such vehicle is equipped with safety glass wherever glass is used in doors, windows, and windshields. Replacements of glass in doors, windows, or windshields shall be of safety glass.

2. "Safety glass" means any product composed of glass, so manufactured, fabricated, or treated as substantially to prevent shattering and flying of the glass when struck or broken. Safety glass and glazing materials shall comply with federal motor vehicle safety standard number 205 as published

in 49 C.F.R. § 571.205.

For applicable scheduled fine, see §805.8A, subsection 3, paragraph a
Section not amended; footnote added

321.445 Safety belts and safety harnesses — use required.

1. Except for motorcycles or motorized bicycles, 1966 model year or newer motor vehicles subject to registration in Iowa shall be equipped with safety belts and safety harnesses which conform with federal motor vehicle safety standard numbers 209 and 210 as published in 49 C.F.R. § 571.209 – 571.210 and with prior federal motor vehicle safety standards for seat belt assemblies and seat belt assembly anchorages applicable for the motor vehicle's model year.

2. The driver and front seat occupants of a type of motor vehicle which is subject to registration in Iowa, except a motorcycle or a motorized bicycle, shall each wear a properly adjusted and fastened safety belt or safety harness any time the vehicle is in forward motion on a street or highway in this state except that a child under six years of age shall be secured as required under section 321.446.

This subsection does not apply to:

a. The driver or front seat occupants of a motor vehicle which is not required to be equipped with safety belts or safety harnesses.

b. The driver and front seat occupants of a motor vehicle who are actively engaged in work which requires them to alight from and reenter the vehicle at frequent intervals, providing the vehicle does not exceed twenty-five miles per hour between stops.

c. The driver of a motor vehicle while performing duties as a rural letter carrier for the United States postal service. This exemption applies only between the first delivery point after leaving the post office and the last delivery point before returning to the post office.

d. Passengers on a bus.

e. A person possessing a written certification from a health care provider licensed under chapter 148, 150, 150A, or 151 on a form provided by the department that the person is unable to wear a safety belt or safety harness due to physical or medical reasons. The certification shall specify the time period for which the exemption applies. The time period shall not exceed twelve months, at which time a new certification may be issued unless the certifying health care provider is from a United States military facility, in which case the certificate may specify a longer period of time or a permanent exemption.

f. Front seat occupants of an authorized emergency vehicle while they are being transported in an emergency. However, this exemption does not apply to the driver of the authorized emergency vehicle.

During the six-month period from July 1, 1986 through December 31, 1986, peace officers shall is-

sue only warning citations for violations of this subsection, except this does not apply to drivers subject to the federal motor carrier safety regulation 49 C.F.R. § 392.16.

The department, in cooperation with the department of public safety and the department of education, shall establish educational programs to foster compliance with the safety belt and safety harness usage requirements of this subsection.

3. The driver and front seat passengers may be each charged separately for improperly used or nonused equipment under subsection 2. The owner of the motor vehicle may be charged for equipment violations under subsection 1.

4. *a.* The nonuse of a safety belt or safety harness by a person is not admissible or material as evidence in a civil action brought for damages in a cause of action arising prior to July 1, 1986.

b. In a cause of action arising on or after July 1, 1986, brought to recover damages arising out of the ownership or operation of a motor vehicle, the failure to wear a safety belt or safety harness in violation of this section shall not be considered evidence of comparative fault under section 668.3, subsection 1. However, except as provided in section 321.446, subsection 6, the failure to wear a safety belt or safety harness in violation of this section may be admitted to mitigate damages, but only under the following circumstances:

(1) Parties seeking to introduce evidence of the failure to wear a safety belt or safety harness in violation of this section must first introduce substantial evidence that the failure to wear a safety belt or safety harness contributed to the injury or injuries claimed by the plaintiff.

(2) If the evidence supports such a finding, the trier of fact may find that the plaintiff's failure to wear a safety belt or safety harness in violation of this section contributed to the plaintiff's claimed injury or injuries, and may reduce the amount of plaintiff's recovery by an amount not to exceed five percent of the damages awarded after any reductions for comparative fault.

5. The department shall adopt rules pursuant to chapter 17A providing exceptions from application of subsections 1 and 2 for front seats and front seat passengers of motor vehicles owned, leased, rented, or primarily used by persons with physical disabilities who use collapsible wheelchairs.

For applicable scheduled fines, see §805.8A, subsection 14, paragraph c. Section not amended; footnote added

321.446 Child restraint devices.

1. A child under three years of age who is being transported in a motor vehicle subject to registration, except a school bus or motorcycle, shall be secured during transit by a child restraint system which meets federal motor vehicle safety standards, and the system shall be used in accordance with the manufacturer's instructions.

2. A child at least three years of age but under six years of age who is being transported in a motor vehicle subject to registration, except a school bus or motorcycle, shall be secured during transit by either a child restraint system that meets federal motor vehicle safety standards and is used in accordance with the manufacturer's instructions, or by a safety belt or safety harness of a type approved under section 321.445.

3. This section does not apply to peace officers acting on official duty. This section also does not apply to the transportation of children in 1965 model year or older vehicles, authorized emergency vehicles, buses, or motor homes, except when a child is transported in a motor home's passenger seat situated directly to the driver's right. This section does not apply to the transportation of a child who has been certified by a physician licensed under chapter 148, 150, or 150A as having a medical, physical, or mental condition that prevents or makes inadvisable securing the child in a child restraint system, safety belt, or safety harness.

4. The operator who violates subsection 1 or 2 is guilty of a misdemeanor and subject only to the penalty provisions of section 805.8A, subsection 14, paragraph "c".

5. A person who is first charged for a violation of subsection 1 and who has not purchased or otherwise acquired a child restraint system shall not be convicted if the person produces in court, within a reasonable time, proof that the person has purchased or otherwise acquired a child restraint system which meets federal motor vehicle safety standards.

6. Failure to use a child restraint system, safety belts, or safety harnesses as required by this section does not constitute negligence nor is the failure admissible as evidence in a civil action.

2001 Acts, ch 132, §11; 2001 Acts, ch 137, §5
Internal reference change applied
Subsection 3 amended

321.449 Motor carrier safety rules.

1. 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.

The department shall also adopt rules concerning hours of service for drivers of vehicles operated for hire and designed to transport seven or more persons, including the driver. The rules shall not apply to vehicles offered to the public for hire that are used principally in intracity operation and that are regulated by local authorities pursuant to section 321.236.

2. Rules adopted under this section concern-

ing 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. Except as otherwise provided in this section, trucks for hire on construction projects are not exempt from this section.

3. Rules adopted under this section concerning driver age qualifications do not apply to drivers for private and for-hire motor carriers which operate solely intrastate except when the vehicle being driven is transporting a hazardous material in a quantity which requires placarding. The minimum age for the exempted intrastate operations is eighteen years of age.

4. 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 twenty-six thousand 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. For-hire drivers who are engaged exclusively in intrastate commerce and who operate trucks and truck-tractors exclusively for the movement of construction materials and equipment to and from construction projects may also 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, as adopted by the department by rule.

5. *a.* Notwithstanding other provisions of this section, rules adopted under this section concerning physical and medical qualifications for drivers of commercial vehicles engaged in intrastate com-

merce shall not be construed as disqualifying any individual who was employed as a driver of commercial vehicles engaged in intrastate commerce whose physical or medical condition existed prior to July 29, 1996.

b. 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.

c. 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.

6. 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.

7. 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.

8. 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.

2001 Acts, ch 132, §12

For applicable scheduled fines, see §805.8A, subsection 13, paragraph b
Subsection 1, unnumbered paragraph 2 amended

321.450 Hazardous materials transportation regulations.

1. A person shall not transport or have transported or shipped within this state any hazardous material except in compliance with rules adopted by the department under chapter 17A. The rules shall be consistent with the federal hazardous materials regulations adopted under United States Code, Title 49, and found in 49 C.F.R. § 107, 171 to 173, 177, 178, and 180.

2. 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, and whose physical or medical condition existed, prior to July 29, 1996.

3. Notwithstanding other provisions of this section, or the age requirements under section 321.449, the age requirements under section 321.449 and the rules adopted under this section pertaining to compliance with regulations adopted under United States Code, Title 49, and found in 49 C.F.R. § 177.804, shall not apply to retail dealers of fertilizers, petroleum products, and pesticides and their employees while delivering fertilizers, petroleum products, and pesticides to farm customers within a one-hundred-mile radius of their retail place of business.

4. Notwithstanding other provisions of this section, rules adopted under this section shall not apply to a farmer or employees of a farmer when transporting an agricultural hazardous material between the sites in the farmer's agricultural operations unless the material is being transported on the interstate highway system. As used in this subsection, "farmer" means a person engaged in the production or raising of crops, poultry, or livestock; "farmer" does not include a person who is a commercial applicator of agricultural chemicals or fertilizers.

5. Notwithstanding other provisions of this section to the contrary, a driver who is engaged exclusively in intrastate commerce and who operates a truck or truck-tractor exclusively for the movement of refined oil products 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.

2001 Acts, ch 32, §20

For applicable scheduled fines, see §805.8A, subsection 13, paragraph c
Unnumbered paragraphs 1 – 4 editorially designated as subsections 1

– 4

NEW subsection 5

321.454 Width of vehicles.

The total outside width of a vehicle or the load on the vehicle shall not exceed eight feet six inches. This limitation on the total outside width of a vehicle or the load on the vehicle does not include safety equipment on a vehicle or incidental appurtenances or retracted awnings on motor homes, travel trailers, or fifth-wheel travel trailers if the incidental appurtenance or retracted awning is less than six inches in width. However, if hay, straw, or stover is moved on an implement of husbandry and the total width of load of the implement of husbandry exceeds eight feet six inches, 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 six inches in width as required under chapter 321E.

For applicable scheduled fines, see §805.8A, subsection 12, paragraph c
Section not amended; footnote added

321.455 Projecting loads on passenger vehicles.

No passenger-type vehicle shall be operated on any highway with any load carried thereon extending beyond the line of the fenders on the left side of such vehicle nor extending more than six inches beyond the line of the fenders on the right side thereof. Passengers shall not ride on any part of any vehicle unless it is expressly designed either for passenger use or designed for carrying livestock, merchandise, or freight.

For applicable scheduled fines, see §805.8A, subsection 12, paragraph c
Section not amended; footnote added

321.456 Height of vehicles — permits — exemption.

A vehicle unladen or with load shall not exceed a height of thirteen feet, six inches, except by permit as provided in this section. However, a vehicle or combination of vehicles coupled together and used exclusively for the transportation of passenger vehicles, light delivery trucks, panel delivery trucks, pickup trucks, or recreational vehicle chassis may operate without a permit provided that the height of the vehicle or vehicles coupled together does not exceed fourteen feet. This section shall not be construed to require any railroad or public authorities to provide sufficient vertical clearance to permit the operation of such vehicle upon the highways of this state. Any damage to highways, highway or railroad structures or underpasses caused by the height of any vehicle provided for by this section shall be borne by the operator or owner of the vehicle. Vehicles unladen or with load exceeding a height of thirteen feet, six inches but not exceeding fourteen feet may be operated with a permit issued by the department or jurisdictional local authorities. The permits shall be issued annually for a fee of twenty-five dollars and subject to rules adopted by the department. The state or a political subdivision shall not be liable for damage to any vehicle or its cargo if changes in vertical clearance of a structure are made subsequent to the issuance of a permit during the term of the permit.

For applicable scheduled fines, see §805.8A, subsection 12, paragraph c
Section not amended; footnote added

321.457 Maximum length.

1. A combination of four vehicles is not allowed on the highways of this state, except for power units saddle mounted on other power units which shall be restricted to a maximum overall length of seventy-five feet.

2. The maximum length of any motor vehicle or combination of vehicles operated on the highways of this state is as follows:

a. A single truck, unladen or with load, shall not have an overall length, inclusive of front and

rear bumpers, in excess of forty feet.

When determining the overall length of a single truck, the following shall be excluded:

(1) Cargo extending not more than three feet beyond the front bumper and not more than four feet beyond the rear bumper when transporting motor vehicles, boats, and chassis.

(2) An unladen cargo carrying device extending no greater than twenty-four inches from the rear of the bed of the truck.

(3) A cargo carrying device with load.

b. A single bus shall not have an overall length, inclusive of front and rear bumpers, in excess of forty-five feet, except that buses constructed so as to contain a flexible part allowing articulation shall not exceed sixty-one feet.

c. A manufactured or mobile home not in excess of forty-eight feet in length may be drawn by any motor vehicle, except a motor truck, provided that the manufactured or mobile home and its towing unit are not in excess of an overall length of sixty feet. For the purposes of this subsection, a light delivery truck, panel delivery truck, or "pickup" is not a motor truck. A portable livestock loading chute not in excess of a length of thirteen feet including its hitch or tongue may be drawn by any vehicle or combination of vehicles, provided that the vehicle or combination of vehicles drawing the loading chute is not in excess of the legal length provided for such vehicles or combinations.

d. A combination of three vehicles coupled together one of which is a motor vehicle, unladen or with load, other than a truck tractor, shall not have an overall length, inclusive of front and rear bumpers, in excess of seventy feet.

e. A motor vehicle or combination of vehicles may be operated upon the highways of this state, irrespective of the length and weight limitations imposed by the laws of this state, if the motor vehicle or combination of vehicles is operated within the corporate limits of a city abutting a border of this state and such operations have been approved by ordinance of the city council and if the length and weight of the motor vehicle or combination of vehicles is in conformity with the laws relating to length and weight of the abutting state. If a city council has authorized such operation upon highways within the corporate limits, then the limit of travel for such motor vehicles or combination of vehicles within the state is extended to the commercial zones as described by federal regulations concerning interstate commerce, 49 C.F.R. § 1048.101, and to the interstate system as provided in 23 U.S.C. § 127 and 49 U.S.C. § 31112(c), as amended by Pub. L. No. 104-59.

f. A trailer or semitrailer, laden or unladen, shall not have an overall length in excess of fifty-three feet when operating in a truck tractor-semi-trailer combination exclusive of retractable exten-

sions used to support the load. However, when a trailer or semitrailer is used exclusively for the transportation of passenger vehicles, light delivery trucks, panel delivery trucks, pickup trucks, recreational vehicle chassis, or boats, the load carried on the trailer or semitrailer may extend up to three feet beyond the front bumper and up to four feet beyond the rear bumper of the trailer or semitrailer. A lowboy semitrailer, laden or unladen, which is designed and exclusively used for the transportation of construction equipment shall not have an overall length in excess of fifty-seven feet when used in a truck tractor-semi-trailer combination.

g. A trailer or semitrailer, laden or unladen, shall not have an overall length in excess of twenty-eight feet six inches when operating in a truck tractor-semi-trailer-trailer combination or truck tractor-semi-trailer-semi-trailer combination. When the semi-trailers in a truck tractor-semi-trailer-semi-trailer combination are connected by a rigid frame extension including a fifth-wheel connection point attached to the rear frame of the first semi-trailer, the length of the frame extension shall not be included when determining the overall length of the first semi-trailer.

h. Power units designed to carry cargo, when used in combination with a trailer or semitrailer shall not exceed sixty-five feet in overall length for the combination exclusive of retractable extensions used to support the load. However, if a combination of vehicles is used exclusively for the transportation of passenger vehicles, light delivery trucks, panel delivery trucks, pickup trucks, recreational vehicle chassis, or boats, the load may extend up to three feet beyond the front bumper of the power unit and up to four feet beyond the rear bumper of the trailer or semitrailer.

i. A stinger-steered automobile transporter shall not have an overall length exceeding seventy-five feet, exclusive of retractable extensions used to support the load and all other devices or appurtenances related to the safe and efficient operation of the vehicle, except that the load may extend up to three feet beyond the front bumper and up to four feet beyond the rear bumper.

j. A motor home shall not have an overall length, excluding front and rear bumpers and safety equipment, in excess of forty-five feet.

k. A combination of two vehicles coupled together, one of which is a motor home, shall not have an overall length in excess of sixty-five feet.

l. A combination of two vehicles coupled together, one of which is a travel trailer or fifth-wheel travel trailer, shall not have an overall length in excess of sixty-five feet.

3. Fire fighting apparatus and vehicles operated during daylight hours when transporting poles, pipe, machinery, or other objects of a struc-

tural nature which cannot be readily disassembled when required for emergency repair of public service facilities or properties are not subject to the limitations on overall length of vehicles and combinations of vehicles imposed under this section. However, for operation during nighttime hours, these vehicles and the load being transported shall be equipped with a sufficient number of clearance lamps on both sides and marker lamps at the extreme ends of the projecting load to clearly mark the dimensions of the load. A member of the Iowa state patrol shall also be notified prior to the operation of the vehicle.

2001 Acts, ch 32, §21, 22; 2001 Acts, ch 153, §15; 2001 Acts, ch 176, §80
For applicable scheduled fines, see §805.8A, subsection 12, paragraph c
Terminology change applied
Subsection 2, paragraph d amended and NEW paragraphs j – l

321.458 Loading beyond front.

The load upon any vehicle operated alone, or the load upon the front vehicle of a combination of vehicles, shall not extend more than three feet beyond the front wheels of such vehicle or the front bumper of such vehicle if it is equipped with such a bumper.

For applicable scheduled fine, see §805.8A, subsection 12, paragraph c
Section not amended; footnote added

321.460 Spilling loads on highways.

A vehicle shall not be driven or moved on any highway by any person unless such vehicle is so constructed or loaded or the load securely covered as to prevent any of its load from dropping, sifting, leaking, or otherwise escaping or its load covering from dropping from the vehicle, except that sand may be dropped for the purpose of securing traction, or water or other substance may be sprinkled on a roadway in cleaning or maintaining such roadway. The provisions of this section shall not apply to vehicles loaded with hay or stover or the products listed in section 321.466, subsections 5 and 6.

For applicable scheduled fine, see §805.8A, subsection 13, paragraph c
Section not amended; footnote added

321.461 Trailers and towed vehicles.

1. When one vehicle is towing another the drawbar or other connection shall not exceed fifteen feet from one vehicle to the other except the connection between any two vehicles transporting poles, pipe, machinery, or other objects of structural nature which cannot readily be dismembered.

2. If the towing vehicle is a motor truck and the towed vehicle is a single trailer with a single point of articulation at the hitch connection, the drawbar or other connection shall not exceed twenty-one feet. The length of the drawbar or other connection shall be measured from the centerline of the hitch assembly on the towing vehicle to the front of the body of the towed vehicle. A vehicle

which has a drawbar or other connection which measures between fifteen and twenty-one feet in length shall have at least one yellow reflector visible on each vertical face of the drawbar or other connection, located near the midpoint between the towing and the towed vehicle. A vehicle which has a drawbar or other connection which measures between fifteen and twenty-one feet in length shall have affixed to the rear of the towed vehicle a sign indicating that the vehicle is a towed vehicle.

For applicable scheduled fines, see §805.8A, subsection 12, paragraph a
Unnumbered paragraphs 1 and 2 editorially designated as subsections 1 and 2

Section not amended; footnote added

321.462 Drawbars and safety chains.

When one vehicle is towing or pulling another vehicle the drawbar or other connection shall be of sufficient strength to pull all weight towed thereby and shall be fastened to the frame of the towing vehicle in such manner as to prevent sideway, and in addition to such principal connection there shall be a safety chain which shall be so fastened as to be capable of holding the towed vehicle should the principal connection for any reason fail.

For applicable scheduled fines, see §805.8A, subsection 12, paragraph a
Section not amended; footnote added

321.463 Maximum gross weight — exceptions — penalties.

1. 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.

2. 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. This subsection does not apply to implements of husbandry.

3. Notwithstanding other provisions of this chapter to the contrary, indivisible loads operating under the permit requirements of sections 321E.7, 321E.8, 321E.9, and 321E.29A shall be allowed a maximum of twenty thousand pounds per axle.

4. *a.* Self-propelled implements of husbandry used exclusively for the application of organic or inorganic plant food materials, agricultural limestone, or agricultural chemicals shall be operated in compliance with this section.

b. (1) Notwithstanding any provision of this section to the contrary, the weight on any one axle of a fence-line feeder, grain cart, or tank wagon operated on the highways of this state shall not exceed twenty-four thousand pounds from February 1 through May 31 or twenty-eight thousand

pounds from June 1 through January 31, provided, however, that the maximum gross vehicle weight of the fence-line feeder, grain cart, or tank wagon shall not exceed ninety-six thousand pounds.

Notwithstanding any provision of this section to the contrary, a tracked implement of husbandry operated on the highways of this state shall not have a maximum gross weight in excess of ninety-six thousand pounds.

A fence-line feeder, grain cart, tank wagon, or tracked implement of husbandry shall comply with the other provisions of this section and chapter when operated over a bridge in this state. A local authority may issue a special permit, based on a statewide standard developed by the department, allowing the operation over a bridge within its jurisdiction of a fence-line feeder, grain cart, tank wagon, or tracked implement of husbandry with a weight in excess of the weights allowed un-

der this chapter.

(2) For purposes of this paragraph "b", "highway" does not include a bridge.

For purposes of this paragraph "b", "fence-line feeder, grain cart, or tank wagon" means all of the following:

(a) A fence-line feeder, grain cart, or tank wagon manufactured on or after July 1, 2001.

(b) After July 1, 2005, any fence-line feeder, grain cart, or tank wagon.

The year of manufacture of a fence-line feeder, grain cart, or tank wagon manufactured on or after July 1, 2001, shall be permanently made a part of the identification plate on the vehicle. Fraudulently altering or defacing or attempting to fraudulently alter or deface the year of manufacture or other product identification number on a fence-line feeder, grain cart, or tank wagon is a violation of section 321.92.

5. a. The maximum gross weight allowed to be carried on a vehicle or combination of vehicles on highways which are part of the interstate system is as follows:

MAXIMUM GROSS WEIGHT TABLE — INTERSTATE HIGHWAYS

Distance in feet	2 Axles	3 Axles	4 Axles	5 Axles	6 Axles	7 Axles
4	34,000					
5	34,000					
6	34,000					
7	34,000	34,000				
8	34,000	34,000				
8'1"	38,000	42,000				
9	39,000	42,500				
10	40,000	43,500	48,500			
11		44,000	49,500			
12		45,000	50,000			
13		45,500	50,500	56,000		
14		46,500	51,500	57,000		
15		47,000	52,000	57,500		
16		48,000	52,500	58,000		
17		48,500	53,500	58,500	64,000	
18		49,500	54,000	59,000	65,000	
19		50,000	54,500	60,000	65,500	
20		51,000	55,500	60,500	66,000	71,500
21		51,500	56,000	61,000	66,500	72,500
22		52,500	56,500	61,500	67,000	73,000
23		53,000	57,500	62,500	68,000	73,500
24		54,000	58,000	63,000	68,500	74,000
25		54,500	58,500	63,500	69,000	74,500
26		55,500	59,500	64,000	69,500	75,000
27		56,000	60,000	65,000	70,000	76,000
28		57,000	60,500	65,500	71,000	76,500
29		57,500	61,500	66,000	71,500	77,000
30		58,500	62,000	66,500	72,000	77,500
31		59,000	62,500	67,500	72,500	78,000
32		60,000	63,500	68,000	73,000	78,500
33			64,000	68,500	74,000	79,500
34			64,500	69,500	74,500	80,000
35			65,500	70,000	75,000	
36			68,000	70,500	75,500	
37			68,000	71,000	76,000	
38			68,000	72,000	77,000	
39			68,000	72,500	77,500	
40			68,500	73,000	78,000	
41			69,500	73,500	78,500	
42			70,000	74,000	79,000	
43			70,500	75,000	80,000	
44			71,500	75,500		
45			72,000	76,000		
46			72,500	76,500		
47			73,500	77,500		
48			74,000	78,000		
49			74,500	78,500		
50			75,500	79,000		
51			76,000	80,000		
52			76,500			
53			77,500			
54			78,000			
55			78,500			
56			79,500			
57			80,000			

b. The maximum gross weight allowed to be carried on a vehicle or combination of vehicles on noninterstate highways is as follows:

NONINTERSTATE HIGHWAYS — MAXIMUM GROSS WEIGHT TABLE

Distance in feet	2 Axles	3 Axles	4 Axles	5 Axles	6 Axles	7 Axles
4	34,000					
5	34,000					
6	34,000					
7	34,000	34,000				
8	34,000	34,000				
8'1"	38,000	42,000				
9	39,000	42,500				
10	40,000	43,500	45,000			
11		44,000	46,000			
12		45,000	47,000			
13		45,500	48,000	48,500		
14		46,500	49,000	49,500		
15		47,000	50,000	50,500		
16		48,000	51,000	51,500		
17		48,500	52,000	52,500	54,000	
18		49,500	53,000	53,500	55,000	
19		50,000	54,500	54,500	56,000	
20		51,000	55,500	55,500	57,000	
21		51,500	56,000	56,500	58,000	
22		52,500	56,500	57,500	59,000	
23		53,000	57,500	58,500	60,000	
24		54,000	58,000	59,500	61,000	
25		54,500	58,500	60,500	62,000	
26		55,500	59,500	61,500	63,000	
27		56,000	60,000	62,500	64,000	
28		57,000	60,500	63,500	65,000	
29		57,500	61,500	64,500	66,000	
30		58,500	62,000	65,500	67,000	
31		59,000	62,500	66,500	68,000	
32		60,000	63,500	67,500	69,000	
33			64,000	68,500	70,000	
34			64,500	69,500	71,000	
35			65,500	70,000	72,000	
36			68,000	70,500	73,000	
37			68,000	71,000	74,000	
38			68,000	72,000	75,000	
39			68,000	72,500	76,000	
40			68,500	73,000	77,000	
41			69,500	73,500	78,000	78,000
42			70,000	74,000	79,000	79,000
43			70,500	75,000	80,000	80,000
44			71,500	75,500		
45			72,000	76,000		
46			72,500	76,500		
47			73,500	77,500		
48			74,000	78,000		
49			74,500	78,500		
50			75,500	79,000		
51			76,000	80,000		
52			76,500			
53			77,500			
54			78,000			
55			78,500			
56			79,500			
57			80,000			

c. The maximum gross weight allowed to be carried on a livestock or construction vehicle on noninterstate highways is as follows:

NONINTERSTATE HIGHWAYS
MAXIMUM GROSS WEIGHT TABLE
LIVESTOCK OR CONSTRUCTION VEHICLE

Distance in feet	6 Axles	7 Axles
44	80,500	80,500
45	81,000	81,500
46	81,500	82,500
47	82,000	83,500
48	83,000	84,000
49	83,500	85,000
50	84,000	86,000
51	84,500	87,000
52	85,000	88,000
53	86,000	88,500
54	86,500	89,500
55	87,000	90,500
56	87,500	91,500
57	88,000	92,000
58	89,000	93,000
59	89,500	94,000
60	90,000	95,000
61		95,500*
62		96,000*

d. For the purposes of the maximum gross weight tables in paragraphs "a", "b", and "c", distance in feet is the measured distance in feet between the centers of the extreme axles of any group of axles, rounded to the nearest whole foot.

e. The maximum gross weight allowed to be carried on a tracked implement of husbandry when operated on a noninterstate highway bridge is as follows:

NONINTERSTATE HIGHWAY BRIDGES
MAXIMUM GROSS WEIGHT TABLE
TRACKED IMPLEMENTS OF HUSBANDRY

Length of Track in Feet	Weight in Pounds
4	34,000
5	34,000
6	34,000
7	34,000
8	42,000
9	42,500
10	45,000
11	46,000
12	47,000
13	48,500
14	49,500
15	50,500
16	51,500
17	54,000
18	55,000
19	56,000
20	57,000
21	58,000
22	59,000
23	60,000
24	61,000
25	62,000
26	63,000
27	64,000
28	65,000
29	66,000
30	67,000
31	68,000
32	69,000
33	70,000
34	71,000
35	72,000
36	73,000
37	74,000
38	75,000
39	76,000
40	77,000
41	78,000
42	79,000
43	80,000

“Length of track in feet” means the length of track on one side of the tracked implement of husbandry which is in contact with the ground or roadway surface.

6. 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.

7. 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, and which is operating on a highway that is not part of the interstate system and along a route of travel approved by the department or the appropriate local authority, 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. If the vehicle exceeds the ten percent tolerance allowed under this subsection, the fine shall be computed on the difference between the actual weight and the ten percent tolerance weight allowed for the axle or tandem axle.

8. A vehicle or combination of vehicles transporting materials to or from a construction project or commercial plant site may operate under the maximum gross weight table for interstate highways in subsection 5, paragraph “a”, if the route is approved by the department or appropriate local authority. Route approval is not required if the vehicle or combination of vehicles transporting materials to or from a construction project or commercial plant site complies with the maximum gross weight table for noninterstate highways in subsection 5, paragraph “c”.

9. 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.

10. a. A person who operates a vehicle in violation 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 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	\$12
Over 1,000 pounds up to and including 2,000 pounds	\$22
Over 2,000 pounds up to and including 3,000 pounds	\$155
Over 3,000 pounds up to and including 4,000 pounds	\$240
Over 4,000 pounds up to and including 5,000 pounds	\$375
Over 5,000 pounds up to and including 6,000 pounds	\$585
Over 6,000 pounds up to and including 7,000 pounds	\$850
Over 7,000 pounds up to and including 8,000 pounds	\$950
Over 8,000 pounds up to and including 9,000 pounds	\$1,050
Over 9,000 pounds up to and including 10,000 pounds	\$1,150
Over 10,000 pounds up to and including 11,000 pounds	\$1,300
Over 11,000 pounds up to and including 12,000 pounds	\$1,400
Over 12,000 pounds up to and including 13,000 pounds	\$1,500
Over 13,000 pounds up to and including 14,000 pounds	\$1,600
Over 14,000 pounds up to and including 15,000 pounds	\$1,700
Over 15,000 pounds up to and including 16,000 pounds	\$1,800
Over 16,000 pounds up to and including 17,000 pounds	\$1,900
Over 17,000 pounds up to and including 18,000 pounds	\$2,000
Over 18,000 pounds up to and including 19,000 pounds	\$2,100
Over 19,000 pounds up to and including 20,000 pounds	\$2,200
Over 20,000 pounds	\$2,200 plus ten cents per pound in excess of 20,000 pounds

b. 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.

c. 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.

d. The schedule of fines may be assessed in addition to any other penalties provided for in this chapter.

11. 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.

12. 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.

2001 Acts, ch 32, §23 – 25

For applicable scheduled fines, see §805.8A, subsection 12, paragraph e
*Maximum allowable gross weights for livestock or construction vehicles which apply to distances of 61 and 62 feet between extreme axles were listed in error as applying to vehicles with six axles in 2001 Code; table corrected editorially

Subsection 4, paragraph b, subparagraph (1), NEW unnumbered paragraph 2

Subsection 4, paragraph b, subparagraph (1), unnumbered paragraph 3 amended

Subsection 5, NEW paragraph e

321.466 Increased loading capacity — re-registration.

1. An increased gross weight registration may be obtained for any vehicle by payment of the difference between the annual fee for the higher gross weight and the amount of the fee for the gross weight at which it is registered.

2. During or after the seventh month of a current registration year, the owner of a motor truck, truck tractor, road tractor, semitrailer or trailer may, if the owner's operation has not resulted in a conviction or action pending under this section, increase the gross weight of the vehicle to a higher gross weight classification by payment of one-twelfth of the difference between the annual fee for the higher gross weight and the amount of the fee for the gross weight at which it is registered, multiplied by the number of unexpired months of the registration year.

3. Upon conversion of a truck to a truck tractor or a truck tractor to a truck, an increased gross weight registration of the proper type may be obtained for the vehicle by payment, except as provided in section 321.106, of one-twelfth of the difference between the annual fee for the higher gross weight and the amount of the annual fee for the gross weight at which the vehicle is registered, multiplied by the number of unexpired months of the registration year from the date of the conversion.

4. The registered gross weight of a vehicle or combination of vehicles may also be increased by installing and using an auxiliary axle or axles, and the combined registered gross weight of the vehicle and auxiliary axle or axles shall determine the total registered gross weight. An auxiliary axle shall not be used to convert a single axle to a tandem axle unless equipped with a device to equalize the load carried by the single axle and the auxiliary axle when in tandem and when in mo-

tion or when standing, and the load transmitted to the highway by either the single axle or the auxiliary axle shall not exceed that permitted for a single axle, nor shall the load transmitted to the highway when in tandem and when in motion or when standing, exceed that permitted for a tandem axle.

5. It shall be unlawful for any person to operate a motor truck, trailer, truck tractor, road tractor, semitrailer or combination thereof, or any such vehicle equipped with a transferable auxiliary axle or axles, on the public highways with a gross weight exceeding that for which it is registered by more than five percent of the gross weight for which it is registered, provided, however, that any vehicle or vehicle combination referred to herein, while carrying a load of raw farm products, soil fertilizers, including ground limestone, raw dairy products or livestock, live poultry, eggs, may be operated with a gross weight of twenty-five percent in excess of the gross weight for which it is registered.

6. For the purposes of this section cracked or ground soy beans, sargo, corn, wheat, rye, oats or other grain shall be deemed to be raw farm products, provided that such products are being directly delivered to a farm, from the place where the whole grain had been delivered from a farm for the purpose of cracking or grinding and immediate delivery to the farm to which such cracked or ground products are being delivered.

7. The truck operator shall have in the truck operator's possession a receipt showing place of processing on the return trip.

For applicable scheduled fines, see §805.8A, subsection 12, paragraph d
Section not amended; footnote added

321.486 Authorized bond forms.

When bond or bail is required under section 811.2 to guarantee appearance for any offense charged under this chapter, the following nonexclusive forms shall be permitted subject to the following limitations:

1. A current guaranteed arrest bond certificate as defined in section 321.1, subsection 30 shall be considered sufficient surety if the defendant is charged with an offense where the penalty does not exceed two hundred dollars.

2. A valid credit card, as defined in section 537.1301, subsection 16, may be used and is sufficient surety when the defendant is charged with a scheduled offense under section 805.8A, 805.8B, or 805.8C. The defendant may use a credit card for bail purposes only in accordance with rules of the department of public safety adopted pursuant to chapter 17A.

2001 Acts, ch 137, §5
Internal reference change applied

321.502 Notification to nonresident — form.

The notification, provided for in section 321.501, shall be in substantially the following form, to wit:

To (Here insert the name of each defendant and the defendant's residence or last known place of abode as definitely as known.)

You will take notice that an original notice of suit against you, a copy of which is hereto attached, was duly served upon you at Des Moines, Iowa, by filing a copy of said notice on the day of,, with the director of transportation of the state of Iowa.

Dated at, Iowa, this day of,

.
Plaintiff.
By
Attorney for plaintiff.

2001 Acts, ch 24, §46
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. Notwithstanding chapter 17A, the notice shall meet the requirements of section 321.16 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 has been issued under 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 driver's 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 driver's 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.

2001 Acts, ch 32, §46
Subsection 1 amended

321.560 Period of revocation — temporary restricted licenses.

1. 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.

a. A temporary restricted license may be issued pursuant to section 321.215, subsection 2, to a person declared to be a habitual offender under section 321.555, subsection 1, paragraph "c".

b. A temporary restricted license may be issued pursuant to section 321J.4, subsection 9, to a person declared to be a habitual offender due to a combination of the offenses listed under section 321.555, subsection 1, paragraph "b" or "c".

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.

3. The department shall adopt rules under chapter 17A that 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.

4. A person who is determined to be a habitual offender while the person's license is already revoked for being a habitual offender under section

321.555 shall not be issued a license to operate a motor vehicle in this state for a period of not less than two years nor more than six years. The revocation period may commence either on 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, or on the date the previous revocation expires.

2001 Acts, ch 132, §13

Subsection 1, paragraphs a and b 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.

2001 Acts, ch 132, §14

Section amended

CHAPTER 321A

MOTOR VEHICLE FINANCIAL RESPONSIBILITY

321A.3 Abstract of operating record — fees to be charged and disposition of fees.

1. The department shall upon request furnish any person a certified abstract of the operating record of a person subject to chapter 321, 321J, or this chapter. The abstract shall also fully designate the motor vehicles, if any, registered in the name of the person. If there is no record of a conviction of the person having violated any law relating to the operation of a motor vehicle or of any injury or damage caused by the person, the department shall so certify. A fee of five dollars and fifty cents shall be paid for each abstract except for state, county, or city officials, court officials, public transit officials, or other officials of a political subdivision of the state. The department shall transfer the moneys collected under this section to the treasurer of state who shall credit to the general fund all moneys collected.

2. A sheriff may provide an abstract of the operating record of a person to the person or an individual authorized by the person. The sheriff shall charge a fee of five dollars and fifty cents for each abstract which the sheriff shall transfer to the department quarterly. The sheriff may charge an additional fee sufficient to cover costs incurred by the sheriff in producing the abstract.

3. The abstracts are not admissible as evidence in an action for damages or criminal proceedings arising out of a motor vehicle accident.

4. The abstract of operating record provided under this section shall designate which speeding violations occurring on or after July 1, 1986, but before May 12, 1987, are for violations of ten miles per hour or less over the legal speed limit in speed zones that have a legal speed limit greater than thirty-five miles per hour. For speeding violations occurring on or after May 12, 1987, the abstract provided under this section shall designate which speeding violations are for ten miles per hour or less over the legal speed limit in speed zones that have a legal speed limit equal to or greater than thirty-five miles per hour but not greater than

fifty-five miles per hour.

5. The department may permit any person to view the operating record of a person subject to chapter 321 or this chapter through one of the department's computer terminals or through a computer printout generated by the department. The department shall not require a fee for a person to view their own operating record, but the department shall impose a fee of one dollar for each of the first five operating records viewed within a calendar day and two dollars for each additional operating record viewed within the calendar day.

6. Fees under subsections 1 and 5 may be paid by credit cards, as defined in section 537.1301, subsection 16, approved for that purpose by the department of transportation. The department shall enter into agreements with financial institutions extending credit through the use of credit cards to ensure payment of the fees. The department shall adopt rules pursuant to chapter 17A to implement the provisions of this subsection.

7. Notwithstanding chapter 22 or any other law of this state, except as provided in subsection 5, the department shall not make available a certified operating record in a manner which would result in a fee of less than that provided under subsection 1. Should the department make available certified copies of abstracts of operating records on magnetic tape or on disk or through electronic data transfer, the five dollar and fifty cent fee under subsection 1 applies to each abstract supplied, and an additional access fee may be charged for each abstract supplied through electronic data transfer.

Transfer of first \$1,000,000 collected in fiscal year from fees for certified abstracts of vehicle operating records to LowAccess revolving fund for developing, implementing, maintaining, and expanding electronic access to government records; 99 Acts, ch 207, §16; 2000 Acts, ch 1226, §6, 28; 2001 Acts, ch 189, §6

Section not amended; footnote revised

321A.14 Suspension to continue until judgments paid and proof given.

A license, registration, and nonresident's oper-

ating privilege shall remain suspended under section 321A.13, and shall not be renewed, nor shall any such license or registration be subsequently issued in the name of the person, including any person not previously licensed, until every judgment is satisfied in full or to the extent hereinafter provided, or until evidence is provided, to the satisfaction of the department, that the judgment has not been renewed and is no longer enforceable. A person whose license, registration, or nonresident's operating privilege was suspended under section 321A.13 must provide proof to the department of financial responsibility subject to the exemptions stated in sections 321A.13 and 321A.16 prior to obtaining a license, registration, or nonresident's operating privilege.

2001 Acts, ch 132, §15
Section amended

321A.32A Civil penalty — disposition — reinstatement.

When the department suspends, revokes, or bars a person's driver's license or nonresident operating privilege under this chapter, the department shall assess the person a civil penalty of two hundred dollars. However, for persons age nineteen or under, the civil penalty assessed shall be fifty dollars. The money collected by the department under this section shall be transmitted to the treasurer of state who shall deposit the money in the juvenile detention home fund created in section 232.142. A temporary restricted license shall not be issued or a driver's license or nonresident operating privilege reinstated until the civil penalty has been paid.

2001 Acts, ch 191, §43
Section amended

CHAPTER 321E

VEHICLES OF EXCESSIVE SIZE AND WEIGHT

321E.8 Annual permits.

Subject to the discretion and judgment provided for in section 321E.1, annual permits shall be issued in accordance with the following provisions:

1. Vehicles with indivisible loads having an overall width not to exceed twelve feet five inches or mobile homes including appurtenances not to exceed twelve feet five inches and an overall length not to exceed seventy-five feet zero inches may be moved for unlimited distances. The vehicle and load shall not exceed the height of thirteen feet ten inches and the total gross weight as prescribed in section 321.463.

2. Vehicles with indivisible loads having an overall width not to exceed thirteen feet five inches or mobile homes, including appurtenances, having an overall width not to exceed thirteen feet five inches and an overall length not to exceed one hundred twenty feet zero inches may be moved on highways specified by the permitting authority for unlimited distances if the height of the vehicle and load does not exceed fifteen feet five inches and the total gross weight of the vehicle does not exceed one hundred thirty-six thousand pounds. The vehicle owner or operator shall verify with the permitting authority prior to movement of the load that highway conditions have not changed so as to prohibit movement of the vehicle. Any cost to repair damage to highways or highway structures shall be borne by the owner or operator of the vehicle causing the damage. Permitted vehicles under this subsection shall not be allowed to travel on any portion of the interstate highway system.

3. Vehicles with indivisible loads, including mobile homes and factory-built structures, having an overall width not to exceed sixteen feet zero inches and an overall length not to exceed one hun-

dred twenty feet zero inches may be moved under an annual or all-systems permit and must have a route specified by the issuing authority prior to the movement. However, vehicles with indivisible loads, including mobile homes and factory-built structures, with an overall width not exceeding fourteen feet six inches may exceed fifty miles under an annual and all-systems permit when prior approval for trip routing is obtained from the issuing authority. A vehicle and load being moved according to this paragraph shall not exceed fifteen feet five inches in height and shall not exceed the total gross weight as prescribed in section 321.463.

2001 Acts, ch 32, §26, 27
Subsection 2 amended
Subsection 4 stricken

321E.14 Fees for permits.

The department or local authorities issuing permits shall charge a fee of twenty-five dollars for an annual permit issued under section 321E.8, subsection 1 or 3, a fee of three hundred dollars for an annual permit issued under section 321E.8, subsection 2, a fee of two hundred dollars for a multi-trip permit, and a fee of ten dollars for a single-trip permit, and shall determine charges for special permits issued pursuant to section 321E.29 by rules adopted pursuant to chapter 17A. Fees for the movement of buildings, parts of buildings, or unusual vehicles or loads may be increased to cover the costs of inspections by the issuing authority. A fee not to exceed two hundred fifty dollars per day or a prorated fraction of that fee per person and car for escort service may be charged when requested or when required under this chapter. Proration of escort fees between state and local authorities when more than one governmental au-

thority provides or is required to provide escort for a movement during the period of a day shall be determined by rule under section 321E.15. The department and local authorities may charge a permit applicant for the cost of trimming trees and removal and replacement of natural obstructions or official signs and signals or other public or private property required to be removed during the movement of a vehicle and load. In addition to the fees provided in this section, the annual fee for a permit for special mobile equipment, as defined in section 321.1, subsection 75, operated pursuant to section 321E.7, subsection 2, with a combined gross weight up to and including eighty thousand pounds shall be twenty-five dollars and for a combined gross weight exceeding eighty thousand pounds, fifty dollars.

The annual fee for an all-system permit is one hundred twenty dollars which shall be deposited in the road use tax fund.

2001 Acts, ch 32, §28
Section amended

321E.16 Violations — penalties.

A person who violates a provision of a permit issued pursuant to this chapter or rules adopted under section 321E.15, other than a provision relating to weight, shall be subject to a scheduled fine under section 805.8A, subsection 12, paragraph “f”. The fine for violation of the weight allowed by a permit shall be based upon the difference between the actual weight of the vehicle and load and the maximum allowable by permit in accordance with section 321.463. If a vehicle with an indivisible load traveling under permit is found to be in violation of weight limitations, the vehicle operator shall be allowed a reasonable amount of time to remove any ice, mud, snow, and other weight attributable to climatic conditions accumulated along the route prior to application of the penalties prescribed in section 321.463.

2001 Acts, ch 137, §5
Internal reference change applied

321E.28 Permits for manufactured or mobile homes or factory-built structures.

The department and local authorities may, upon application and with good cause shown, issue single-trip, multi-trip, or annual permits for the movement of manufactured or mobile homes or factory-built structures of widths including appendances exceeding twelve feet five inches subject to the following conditions:

1. Permits shall be issued only when the movement can be safely accomplished without causing unnecessary traffic congestion.

2. Permits issued under this section shall specify the route over which the manufactured or mobile home or factory-built structure shall be moved, and wherever possible, the department and local authorities shall specify highways having a roadway at least twenty-four feet in width.

3. Single-trip permits may be issued by the department or local authorities contingent upon favorable road and weather conditions.

4. A permit may be issued to allow the movement of a manufactured or mobile home or factory-built structure on a fully controlled-access, divided, multilaned highway.

For the purposes of this section, “factory-built structure” means a structure which is wholly or in substantial part, made, fabricated, formed, or assembled in manufacturing facilities for installation or assembly and installation on a building site and which is temporarily moved on its own axles.

2001 Acts, ch 153, §15; 2001 Acts, ch 176, §80
Terminology change applied

321E.31 Permit for moving certain manufactured or mobile homes.

All manufactured or mobile homes moved in this state which are registered in another state shall only be moved on the highways with a permit issued under sections 321E.8 and 321E.28.

2001 Acts, ch 153, §15; 2001 Acts, ch 176, §80
Terminology change applied

CHAPTER 321G

SNOWMOBILES AND ALL-TERRAIN VEHICLES

321G.3 Registration and numbering required.

1. Each all-terrain vehicle and snowmobile used on public land or ice of this state shall be currently registered and numbered. A person shall not operate, maintain, or give permission for the operation or maintenance of an all-terrain vehicle or snowmobile on public land or ice unless the all-terrain vehicle or snowmobile is numbered in accordance with this chapter, or in accordance with applicable federal laws, or in accordance with an

approved numbering system of another state, and unless the identifying number set forth in the registration is displayed on each side of the forward half of the snowmobile and on the rear fender of the all-terrain vehicle.

2. A registration number shall be assigned, without payment of fee, to all-terrain vehicles and snowmobiles owned by the state of Iowa or its political subdivisions upon application for the number, and the assigned registration number shall be displayed on the all-terrain vehicle or

snowmobile as required under section 321G.5.

For applicable scheduled fines, see §805.8B, subsection 2, paragraph a. Unnumbered paragraphs 1 and 2 editorially designated as subsections 1 and 2.

Section not amended; footnote added

321G.5 Display of identification numbers.

The owner shall cause the identification number to be attached to each side of the forward half of a snowmobile and to the rear fender of an all-terrain vehicle in the manner prescribed by the rules of the commission. The identification number shall be maintained in legible condition at all times.

For applicable scheduled fine, see §805.8B, subsection 2, paragraph e. Section not amended; footnote added

321G.9 Operation on roadways and highways.

A person shall not operate an all-terrain vehicle or snowmobile upon roadways or highways, as defined in section 321.1, except as provided in section 321.234A and this chapter.

1. An all-terrain vehicle or snowmobile shall not be operated at any time within the right of way of any interstate highway or freeway within this state except under either of the following circumstances:

a. As provided in section 321.234A.

b. When using an underpass located on an interstate highway or freeway if all of the following apply:

(1) The underpass has been abandoned and is no longer being used by motor vehicles or trains.

(2) Use of the underpass is the only alternative to the use of a traveled roadway.

(3) Notwithstanding the provisions of chapter 321, use of the underpass does not conflict with any rules or regulations adopted by a federal governmental entity or this state or a political subdivision of this state.

2. An all-terrain vehicle or snowmobile may make a direct crossing of a street or highway provided:

a. The crossing is made at an angle of approximately ninety degrees to the direction of the highway and at a place where no obstruction prevents a quick and safe crossing; and

b. The all-terrain vehicle or snowmobile is brought to a complete stop before crossing the shoulder or main traveled way of the highway; and

c. The driver yields the right of way to all oncoming traffic which constitutes an immediate hazard; and

d. In crossing a divided highway, the crossing is made only at an intersection of such highway with another public street or highway.

3. An all-terrain vehicle or snowmobile shall not be operated on public highways:

a. On the roadway portion of a highway and adjacent shoulder, or at least five feet on either side of the roadway, except as provided in subsec-

tion 4 of this section, and

b. On limited access highways and approaches, and

c. For racing any moving object, and

d. Abreast with one or more other all-terrain vehicles or snowmobiles on a city highway.

4. A registered all-terrain vehicle or snowmobile may be operated under the following conditions:

a. Upon city highways which have not been plowed during the snow season or on such highways as designated by the governing body of a municipality.

b. On that portion of county roadways that have not been plowed during the snow season or not maintained or utilized for the operation of conventional two-wheel drive motor vehicles.

c. On highways in an emergency during the period of time when and at locations where snow upon the roadway renders travel by conventional motor vehicles impractical.

d. On the roadways of that portion of county highways designated by the county board of supervisors for such use during a specified period. The county board of supervisors shall evaluate the traffic conditions on all county highways and designate roadways on which all-terrain vehicles or snowmobiles may be operated for the specified period without unduly interfering with or constituting an undue hazard to conventional motor vehicle traffic. Signs warning of the operation of all-terrain vehicles or snowmobiles on the roadway shall be placed and maintained on the portions of highway thus designated during the period specified for the operation.

e. On the roadway or shoulder when necessary to cross a bridge or culvert, or avoid an obstruction which makes it impossible to travel on the portion of the highway not intended for motor vehicles, if the snowmobile is brought to a complete stop before entering onto the roadway or shoulder and the driver yields the right of way to any approaching vehicle on the roadway.

f. All-terrain vehicles shall not be operated on snowmobile trails except where designated by the controlling authority and the primary snowmobile trail sponsor.

g. Snowmobiles shall not be operated on all-terrain vehicle trails except where designated by the controlling authority and the primary all-terrain vehicle trail sponsor.

5. The headlight and taillight shall be lighted during the operation on a public highway at any time from sunset to sunrise, and at such other times when conditions such as fog, snow, sleet or rain provide insufficient lighting to render clearly discernible persons and vehicles at a distance of five hundred feet ahead.

6. *a.* An all-terrain vehicle or snowmobile shall not be operated on or across a public highway by a person under sixteen years of age who does not have in the person's possession a safety certifi-

cate issued to the person pursuant to this chapter.

b. A person twelve to fifteen years of age and possessing a valid safety certificate must be under the direct supervision of a parent, guardian, or another adult authorized by the parent or guardian, who is experienced in all-terrain vehicle or snowmobile operation, and who possesses a valid driver's license as defined in section 321.1, or a safety certificate issued under this chapter.

7. An all-terrain vehicle or snowmobile shall not be operated within the right of way of a primary highway between the hours of sunset and sunrise except on the right-hand side of the right of way and in the same direction as the motor vehicular traffic on the nearest lane of traveled portion of the right of way.

For applicable scheduled fines, see §805.8B, subsection 2, paragraph b
Section not amended; footnote added

321G.11 Mufflers required.

1. An all-terrain vehicle or snowmobile shall not be operated without suitable and effective muffling devices which limit engine noise to not more than eighty-six decibels as measured on the "A" scale at a distance of fifty feet; and a snowmobile, manufactured after July 1, 1973, which is sold, offered for sale, or used in this state, except in an authorized special event, shall have a muffler system that limits engine noise to not more than eighty-two decibels as measured on the "A" scale at a distance of fifty feet.

2. The commission may adopt rules with respect to the inspection of all-terrain vehicles and snowmobiles and testing of their mufflers.

3. A separate placard shall be affixed, permanently and conspicuously, to any new snowmobile sold or offered for sale in this state that does not meet the muffler requirements as stated above. The placard shall designate each snowmobile which does not meet the muffler requirements.

4. A snowmobile manufactured after July 1, 1975, which is sold, offered for sale or used in this state, except in an authorized special event, shall have a muffler system that limits engine noise to not more than seventy-eight decibels as measured on the "A" scale at a distance of fifty feet.

For applicable scheduled fines, see §805.8B, subsection 2, paragraph b
Unnumbered paragraphs 1 - 4 editorially designated as subsections 1

- 4

Section not amended; footnote added

321G.12 Head lamp — tail lamp — brakes.

Every all-terrain vehicle operated during the hours of darkness shall display a lighted head lamp and tail lamp. Every snowmobile shall be equipped with at least one head lamp and one tail lamp. Every all-terrain vehicle and snowmobile shall be equipped with brakes.

For applicable scheduled fines, see §805.8B, subsection 2, paragraph b
Section not amended; footnote added

321G.13 Unlawful operation.

A person shall not drive or operate an all-terrain vehicle or snowmobile:

1. At a rate of speed greater than reasonable or proper under all existing circumstances.

2. In a careless, reckless, or negligent manner so as to endanger the person or property of another or to cause injury or damage thereto.

3. While under the influence of intoxicating liquor or narcotics or habit-forming drugs.

4. Without a lighted headlight and taillight from sunset to sunrise and at such other times when conditions provide insufficient lighting to render clearly discernible persons and vehicles at a distance of five hundred feet ahead.

5. In any tree nursery or planting in a manner which damages or destroys growing stock.

6. On any public land, ice, or snow, in violation of official signs of the commission prohibiting such operation in the interest of safety for persons, property, or the environment. Any officer appointed by the commission may post an official sign in an emergency for the protection of persons, property, or the environment.

7. In or on any park or fish and game areas except on designated all-terrain vehicle or snowmobile trails.

8. Upon an operating railroad right-of-way. An all-terrain vehicle or snowmobile may be driven directly across a railroad right-of-way only at an established crossing and, notwithstanding any other provisions of law, may, if necessary, use the improved portion of the established crossing after yielding to all oncoming traffic. This subsection does not apply to a law enforcement officer or railroad employee in the lawful discharge of the officer's or employee's duties or to an employee of a utility with authority to enter upon the railroad right-of-way in the lawful performance of the employee's duties.

9. On any public road or street without a bright colored pennant or flag displayed at least sixty inches above the ground. Said pennant or flag shall be a minimum of six inches by nine inches, shall be orange and shall provide a fluorescent effect.

10. On public land without a measurable snow cover except as provided in section 321.234A or in specific areas permitted by the commission, such as "all-terrain vehicle parks" which are designated and intended for use with or without snow.

11. A person shall not operate or ride in an all-terrain vehicle or snowmobile with a firearm in the person's possession unless it is unloaded and enclosed in a carrying case. However, a nonambulatory person may carry an uncased and unloaded firearm while operating or riding an all-terrain vehicle or a snowmobile.

12. A person shall not operate an all-terrain vehicle while carrying a passenger.

For applicable scheduled fines, see §805.8B, subsection 2, paragraph b
Section not amended; footnote added

321G.19 Rented snowmobiles and all-terrain vehicles.

1. The owner of a rented all-terrain vehicle or snowmobile shall keep a record of the name and address of each person renting the all-terrain vehicle or snowmobile, its identification number, the departure date and time, and the expected time of return. The records shall be preserved for six months.

2. The owner of an all-terrain vehicle or snowmobile operated for hire shall not permit the use or operation of a rented all-terrain vehicle or snowmobile unless it has been provided with all equipment required by this chapter or rules of the commission or the director of transportation, properly installed and in good working order.

For applicable scheduled fines, see §805.8B, subsection 2, paragraph d
Section not amended; footnote added

CHAPTER 321J

OPERATING WHILE INTOXICATED

321J.1 Definitions.

As used in this chapter unless the context otherwise requires:

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. *“Arrest”* includes but is not limited to taking into custody pursuant to section 232.19.
4. *“Controlled substance”* means any drug, substance, or compound that is listed in section 124.204 or 124.206, or any metabolite or derivative of the drug, substance, or compound.
5. *“Department”* means the state department of transportation.
6. *“Director”* means the director of transportation or the director’s designee.
7. *“Driver’s 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, or temporary permit.
8. *“Peace officer”* means:
 - a. A member of the Iowa state patrol.
 - b. A police officer under civil service as provided in chapter 400.
 - c. A sheriff.
 - d. A regular deputy sheriff who has had formal police training.
 - e. Any other law enforcement officer who has satisfactorily completed an approved course relating to motor vehicle operators under the influence of alcoholic beverages at the Iowa law enforcement academy or a law enforcement training program approved by the department of public safety.
9. *“Serious injury”* means a bodily injury which creates a substantial risk of death, or which

causes serious permanent disfigurement, or which causes protracted loss or impairment of the function of any bodily organ or major bodily member, or which causes the loss of any bodily member.

2001 Acts, ch 132, §16
Subsection 7 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 driver’s license and any nonresident operating privilege for the following periods of time:

- a. One year if the person has no previous revocation under this chapter; and
- b. Two years if the person has had a previous revocation under this chapter.

2. a. A person whose driver’s license or nonresident operating privileges are revoked 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 driver’s license or nonresident operating privileges are revoked 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.

b. The defendant shall be ordered to install an ignition interlock device of a type approved by the commissioner of public safety on all vehicles owned or operated by the defendant if the defendant seeks a temporary restricted license at the end of the minimum period of ineligibility. A temporary restricted license shall not be granted by the department until the defendant installs the ignition interlock device.

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 first class mail, notwithstanding chapter 17A. The peace officer who requested or directed the administration of a chemical test may, on behalf of the department, serve immediate notice of intention to revoke and of revocation on a person who refuses to permit chemical testing. If the peace officer serves immediate notice, the peace officer shall take the Iowa license or permit of the driver, if any, and issue a temporary license effective for 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.

2001 Acts, ch 32, §47
Subsection 4 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 the presence of a controlled substance or other drug, or an alcohol concentration equal to or in excess of the level prohibited by section 321J.2, or a combination of alcohol and another drug in violation of section 321J.2, the department shall revoke the person's driver's license or nonresident operating privilege for the following periods of time:

a. One hundred eighty days if the person has had no revocation under this chapter.

b. One year if the person has had a previous revocation under this chapter.

2. A person whose driver's 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. If the person is under the age of twenty-one, the person shall not be eligible for a temporary re-

stricted license for at least sixty 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 first class mail, notwithstanding chapter 17A. 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 the presence of a controlled substance or other drug, or an alcohol concentration equal to or in excess of the level prohibited by section 321J.2, or a combination of alcohol and another controlled substance or drug in violation of section 321J.2.

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 the presence of a controlled substance or other drug, or an alcohol concentration equal to or in excess of the level prohibited by section 321J.2.

5. Upon certification, subject to penalty of 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 driver's license or operating privilege for a period of sixty days if the person has had no previous revocation under this chapter, and for a period of ninety days if the person has had a previous revocation under this chapter.

6. The results of a chemical test may not be used as the basis for a revocation of a person's driver's license or nonresident operating privilege if the alcohol or drug concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the chemical test is not equal to or in excess of the level prohibited by section 321J.2 or 321J.2A.

2001 Acts, ch 32, §48
Subsection 3 amended

CHAPTER 321L

PARKING FOR PERSONS WITH DISABILITIES

321L.2A Wheelchair parking cone.

1. A person issued a persons with disabilities parking permit under section 321L.2 who uses a wheelchair due to a disability that renders the person permanently unable to walk may park in a persons with disabilities parking space, or a parking space not designated as a persons with disabilities parking space, and reserve up to an eight foot space adjacent to the motor vehicle for the purpose of exiting and entering the motor vehicle if all of the following conditions are met:

a. The person places a wheelchair parking cone within eight feet of the motor vehicle's entry.

b. The person displays the persons with disabilities parking permit in the motor vehicle as described in section 321L.4.

c. The motor vehicle and the wheelchair parking cone do not obstruct an aisle, street, or roadway so that other vehicles are unable to pass through the aisle, street, or roadway.

d. The parking space is provided by the state, a political subdivision of the state, or an entity providing nonresidential parking.

e. The person carries in the motor vehicle a copy of the statement from a physician, physician's assistant, advanced registered nurse practitioner, or chiropractor which accompanied the person's application for persons with disabilities registration plates under section 321.34 or other persons with disabilities parking permit under section 321L.2 and which indicates the person is permanently unable to walk. The person shall show the copy of the statement to any peace officer upon request.

2. A person issued a persons with disabilities parking permit who does not comply with the requirements of subsection 1 when using a wheelchair parking cone commits a misdemeanor punishable by a scheduled fine under section 805.8A, subsection 1, paragraph "b".

3. A person shall not interfere with a wheelchair parking cone properly placed under subsection 1. A violation of this subsection is a misdemeanor punishable by a scheduled fine under section 805.8A, subsection 1, paragraph "c".

4. The department, upon the request of a person issued a persons with disabilities parking permit under section 321L.2 who uses a wheelchair, shall provide the person with a list of names and addresses of vendors who sell wheelchair parking cones bearing the international symbol of accessibility and the words "wheelchair parking space".

5. The department shall adopt rules as necessary to administer this section.

2001 Acts, ch 137, §5
Internal reference change applied

321L.3 Return of persons with disabilities parking permits.

Persons with disabilities parking permits shall be returned to the department upon the occurrence of any of the following:

1. The person to whom the persons with disabilities parking permit has been issued is deceased.

2. The person to whom the persons with disabilities parking permit has been issued has moved out of state.

3. A person has found or has in the person's possession a persons with disabilities parking permit that was not issued to that person.

4. The persons with disabilities parking permit has expired.

5. The persons with disabilities parking permit has been revoked.

6. The persons with disabilities parking permit reported lost or stolen is later found or retrieved after a subsequent persons with disabilities parking permit has been issued.

A person who fails to return the persons with disabilities parking permit and subsequently misuses the permit by illegally parking in a persons with disabilities parking space is guilty of a simple misdemeanor punishable as a scheduled violation under section 805.8A, subsection 1, paragraph "c".

Persons with disabilities parking permits may be returned to the department as required by this section either directly to the department to a driver's license station or any law enforcement office.

2001 Acts, ch 176, §55, 59
Unnumbered paragraph 2 amended

321L.4 Persons with disabilities parking — display and use of parking permit and persons with disabilities identification designation.

1. A persons with disabilities parking permit shall be displayed in a motor vehicle as a removable windshield placard or on a vehicle as a plate or sticker as provided in section 321L.2 when being used by a person with a disability, either as an operator or passenger. Each removable windshield placard shall be of uniform design and fabricated of durable material, suitable for display from within the passenger compartment of a motor vehicle, and readily transferable from one vehicle to another. The placard shall only be displayed when the motor vehicle is parked in a persons with disabilities parking space, except as provided in section 321L.2A.

2. The use of a persons with disabilities parking space, located on either public or private property as provided in sections 321L.5 and 321L.6, by

an operator of a vehicle not displaying a persons with disabilities parking permit; by an operator of a vehicle displaying a persons with disabilities parking permit but not being used by a person issued a permit or being transported in accordance with section 321L.2, subsection 1, paragraph “b”; or by a vehicle in violation of the rules adopted by the department under section 321L.8, constitutes improper use of a persons with disabilities parking permit, which is a misdemeanor for which a scheduled fine shall be imposed upon the owner, operator, or lessee of the vehicle or the person to whom the persons with disabilities parking permit is issued. The scheduled fine for each violation shall be as established in section 805.8A, subsection 1, paragraph “c”. Proof of conviction of two or more violations involving improper use of a persons with disabilities parking permit is grounds for revocation by the court or the department of the holder’s privilege to possess or use the persons

with disabilities parking permit.

3. A peace officer as designated in section 801.4, subsection 11, shall have the authority to and shall enforce the provisions of this section on public and private property.

2001 Acts, ch 137, §5
Internal reference change applied

321L.7 Penalty for failing to provide persons with disabilities parking spaces and signs.

Failure to provide proper persons with disabilities parking spaces as provided in section 321L.5 or to properly display persons with disabilities parking signs as provided in section 321L.6 is a simple misdemeanor punishable as a scheduled violation under section 805.8A, subsection 1, paragraph “c”.

2001 Acts, ch 176, §56, 59
Section amended

CHAPTER 321M

COUNTY ISSUANCE OF DRIVER’S LICENSES

321M.1 Definitions.

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

1. “*Cluster*” means a group of four to six contiguous counties serving a population area comparable to an area served by a department itinerant team, that is subject to an agreement among the participating counties that is executed pursuant to chapter 28E.

2. “*Commercial driver’s license*” means a driver’s license valid for the operation of a commercial motor vehicle, as regulated by chapter 321.

3. “*County issuance*” means the system or process of issuing driver’s licenses, nonoperator identification cards, and persons with disabilities identification devices, including all related testing, to the same extent that such items are issued by the department.

4. “*Department*” means the state department of transportation.

5. “*Digitized photolicensing equipment*” means the machines and related materials, obtained pursuant to contract, the use of which results in the on-site production of driver’s licenses and nonoperator identification cards.

6. “*Digitized photolicensing equipment contract period*” means the period of time that the contract for the digitized photolicensing equipment is in effect, including any contract extensions elected by the department under the terms of the contract.

7. “*Driver’s 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, tempo-

rary restricted, or temporary license and an instruction, chauffeur’s instruction, commercial driver’s instruction, or temporary permit.

8. “*Initial opt-in period*” means the first opportunity for a county to indicate its interest in being authorized to participate in county issuance.

9. “*Issuing county*” means a county that is participating in county issuance.

10. “*Itinerant team*” means a traveling team of department personnel assigned to license issuance activities in a specified geographic area.

11. “*Motor vehicle*” means a vehicle which is self-propelled, including but not limited to automobiles, cars, motor trucks, semitrailers, motorcycles, and similar vehicles regulated under chapter 321.

12. “*Nonoperator identification card*” means the card issued pursuant to section 321.190 that contains information pertaining to the personal characteristics of the applicant but does not convey to the person issued the card any operating privileges for any motor vehicle.

13. “*Opt in*” means a county’s indication of its interest in being authorized to participate in county issuance, or to continue participating in county issuance.

14. “*Opt-in period*” means a time period when a county may indicate its interest in being authorized to participate in county issuance, or to continue participating in county issuance.

15. “*Opt out*” means the choice of a county that is authorized to issue licenses to terminate that authorization and its participation in county issuance.

16. “*Opt-out period*” means a time period when a county that is authorized to issue licenses may terminate that authorization and its future participation in county issuance.

17. “*Persons with disabilities identification*

devices” means those devices issued pursuant to chapter 321L.

2001 Acts, ch 132, §17
Subsection 7 amended

CHAPTER 322

MOTOR VEHICLE MANUFACTURERS, DISTRIBUTORS AND DEALERS

Court action required for termination of installment contracts during military service;
2001 Acts, 2nd Ex, ch 1, §29, 31, 35, 36
Court action or parties agreement required for disposition of property under obligation secured by mortgage, trust deed, or other security during military service;
2001 Acts, 2nd Ex, ch 1, §29, 32, 35, 36

322.2 Definitions.

As used in this chapter and unless a different meaning appears from the context:

1. “*At retail*” means to dispose of a motor vehicle to a person who will devote it to a consumer use.

2. “*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.

3. “*Department*” means the state department of transportation.

4. “*Distributor*” or “*wholesaler*” means a person, resident or nonresident, who in whole or part, sells or distributes motor vehicles to motor vehicle dealers, or who maintains distributor representatives.

5. “*Distributor branch*” means a branch office similarly maintained by a distributor or wholesaler for the same purposes.

6. “*Distributor representative*” means a representative similarly employed by a distributor, distributor branch or wholesaler.

7. “*Engaged in the business*” means doing any of the following acts for the purpose of the sale of motor vehicles at retail: acquiring, selling, exchanging, holding, offering, displaying, brokering, accepting on consignment, conducting a retail auction, or acting as an agent for the purpose of doing any of those acts. A person selling at retail more than six motor vehicles during a twelve-month period may be presumed to be engaged in the business.

8. “*Factory branch*” means a branch office maintained by a person who manufactures or assembles motor vehicles, for the sale of motor vehicles to distributors, or for the sale of motor vehicles to motor vehicle dealers or for directing or supervising in whole or part, its representatives.

9. “*Factory representative*” means a representative employed by a person who manufactures or assembles motor vehicles or by a factory branch,

for the purpose of making or promoting the sale of its motor vehicles, or for supervising or contacting its dealers or prospective dealers.

10. The “*holder*” of a retail installment contract means the retail seller of the motor vehicle under or subject to the contract or, if the contract is purchased by a sales finance company or other assignee, the sales finance company or other assignee.

11. “*Manufacturer*” means any person engaged in the business of fabricating or assembling motor vehicles. 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.

12. “*Motor vehicle*” means any self-propelled vehicle subject to registration under chapter 321.

13. “*Person*” includes any individual, firm, corporation, copartnership, joint adventure, or association, and the plural as well as the singular number.

14. “*Place of business*” means a designated location wherein proper and adequate facilities shall be maintained for displaying, reconditioning, and repairing either new or used cars.

15. “*Retail buyer*” or “*buyer*” means a person who buys a motor vehicle from a retail seller.

16. “*Retail installment contract*” or “*contract*” means an agreement, entered into in this state, pursuant to which the title to, the property in or a lien upon the motor vehicle, which is the subject matter of a retail installment transaction, is retained or taken by a retail seller from a retail buyer as security, in whole or in part, for the buyer’s obligation. The term includes a chattel mortgage, a conditional sales contract and a contract for the bailment or leasing of a motor vehicle by which the bailee or lessee contracts to pay as compensation for its use a sum substantially equivalent to or in excess of its value and by which it is agreed that the bailee or lessee is bound to become, or has the option of becoming, the owner of the motor vehicle

upon full compliance with the provisions of the contract.

17. “*Retail installment transaction*” means any sale evidenced by a retail installment contract between a retail buyer and a retail seller wherein the retail buyer buys a motor vehicle from a retail seller at a time price payable in one or more installments.

18. “*Retail seller*” or “*seller*” means a person who sells a motor vehicle to a retail buyer.

19. “*Sales finance company*” means a person engaged, in whole or in part, in the business of purchasing retail installment contracts from one or more retail sellers. The term also includes a retail seller engaged, in whole or in part, in the business of creating and holding retail installment contracts. The term does not include the pledgee of an aggregate number of such contracts to secure a bona fide loan thereon.

20. “*Selling*” includes bartering, exchanging, delivering, or otherwise dealing in.

21. “*Special equipment*” means equipment installed on a motor truck which, in combination with the motor truck on which the equipment is installed, constitutes a self-contained unit configured for a specific purpose. To constitute special equipment, a minimum of seven thousand five hundred dollars or twenty-five percent of the retail value of the motor truck, whichever is greater, must be expended in installing the equipment on the motor truck, including the cost of the equipment. “*Special equipment*” does not include equipment designed for the transportation of passengers.

22. “*Used motor vehicle*” or “*second-hand motor vehicle*” means any motor vehicle of a type subject to registration under the laws of this state which has been sold “at retail” as defined in this chapter and previously registered in this or any other state.

Nothing contained herein shall be construed to require the licensing or to apply to any bank, credit union or trust company in Iowa.

2001 Acts, ch 32, §29

NEW subsection 21 and former subsection 21 renumbered as 22

322.3 Prohibited acts.

1. A person shall not engage in this state in the business of selling at retail new motor vehicles of any make or represent or advertise that the person is engaged or intends to engage in such business in this state unless the person is authorized to do so by a contract in writing with the manufacturer or distributor of such make of new motor vehicles and unless the department has licensed the person as a motor vehicle dealer in this state in motor vehicles of such make and has issued to the person a license in writing as provided in this chapter.

2. A person other than a licensed dealer in new motor vehicles shall not engage in this state in the business of selling at retail used motor vehicles or

represent or advertise that the person is engaged or intends to engage in such business in this state unless and until the department has licensed the person as a used motor vehicle dealer in the state and has issued to the person a license in writing as provided in this chapter.

3. Subsections 1 and 2 shall not be construed to require the separate licensing of persons employed as salespersons of motor vehicles by a retail motor vehicle dealer. However, the department may promulgate reasonable rules as necessary for the proper identification of persons employed as salespersons.

4. A person who is engaged in the business of selling at retail motor vehicles shall not enter into any contract, agreement, or understanding, express or implied, with any manufacturer or distributor of any such motor vehicles that the person will sell, assign, or transfer any retail installment contracts arising from the retail installment sale of such motor vehicles only to a designated person or class of persons. A condition, agreement, or understanding between any manufacturer or distributor and a motor vehicle dealer in this state of this nature is hereby declared to be against the public policy of this state and to be unlawful and void.

5. A manufacturer or distributor of motor vehicles or any agent or representative of a manufacturer or distributor shall not terminate, threaten to terminate, or fail to renew any contract, agreement, or understanding for the sale of new motor vehicles to any motor vehicle dealer in this state without just, reasonable, and lawful cause or because the motor vehicle dealer failed to sell, assign, or transfer any retail installment contract arising from the retail sale of such motor vehicles or any one or more of them to a person or a class of persons designated by the manufacturer or distributor.

6. A person who is engaged in the business of selling at retail motor vehicles shall not make and enter into a retail installment contract unless the contract meets the following requirements:

a. Every retail installment contract shall be in writing, shall be signed by both the buyer and the seller, and shall be completed as to all essential provisions prior to the signing of the contract by the buyer except that, if delivery of the motor vehicle is not made at the time of the execution of the contract, the identifying numbers or marks of the motor vehicle or similar information and the due date of the first installment may be inserted in the contract after its execution.

b. The contract shall comply with the Iowa consumer credit code, where applicable.

7. This section shall not be construed to require that a place of business as defined in this chapter shall be maintained by a person selling motor vehicles at retail solely for the purpose of disposing of motor vehicles acquired or repossessed by such person in exercise of powers or rights granted by lien or title-retention instru-

ments or contracts given as security for loans or purchase money obligations.

8. A manufacturer or distributor of motor vehicles or agent or representative of a manufacturer or distributor shall not coerce or attempt to coerce any motor vehicle dealer to accept delivery of any motor vehicle or vehicles, parts, or accessories, or any other commodity or commodities which have not been ordered by the dealer.

9. A person licensed under this chapter shall not, either directly or through an agent, salesperson, or employee, engage in this state, or represent or advertise that the person is engaged or intends to engage in this state, in the business of buying or selling at retail new or used motor vehicles, other than mobile homes more than eight feet in width or more than thirty-two feet in length as defined in section 321.1, on the first day of the week, commonly known and designated as Sunday.

10. A manufacturer, distributor, or importer of motor vehicles or agent or representative of such manufacturer, distributor, or importer shall not require a motor vehicle dealer to submit to arbitration to resolve a controversy before the controversy arises. The parties may enter into a voluntary agreement to arbitrate a controversy after it arises. Such an agreement shall require that the arbitrator apply Iowa law in resolving the controversy. Either party may appeal a decision of an arbitrator to the district court on the grounds that the arbitrator failed to apply Iowa law.

11. A person who is engaged in the business of selling motor vehicles at retail shall not sell, offer for sale, display, represent, or advertise that the person intends to sell motor vehicles from a location other than the person's place of business, except as provided in section 322.5.

12. A person convicted of a fraudulent practice in connection with selling, bartering, or otherwise dealing in motor vehicles, in this state or any other state, shall not for a period of five years from the date of conviction be an owner, salesperson, officer of a corporation, or dealer representative of a licensed motor vehicle dealer or represent themselves as an owner, salesperson, or dealer representative of a licensed motor vehicle dealer.

13. A manufacturer, distributor, or importer of motor vehicles or agent or representative of such manufacturer, distributor, or importer shall not reduce the amount of compensation for, or disallow a claim for, any of the following if twelve months or more have passed since the claim was submitted to the manufacturer, distributor, or importer or agent or representative thereof:

a. Warranty parts, repairs, or service supplied by a motor vehicle dealer.

b. Sales or leasing incentives provided to a motor vehicle dealer or to a customer of a motor vehicle dealer including, but not limited to, rebates and discounted interest rates.

The twelve-month limitation shall not apply if a court of competent jurisdiction in this state finds

the claim was fraudulent.

14. A manufacturer or importer shall not directly or indirectly be licensed as, own an interest in, operate, or control a motor vehicle dealer. This subsection shall not prohibit any of the following:

a. A manufacturer or importer from being licensed as a motor vehicle dealer or owning an interest in, operating, or controlling a motor vehicle dealership for a period not to exceed one year to facilitate transfer of the motor vehicle dealership to a new owner if both of the following apply:

(1) The prior owner transferred the motor vehicle dealership to the manufacturer or importer.

(2) The motor vehicle dealership is continuously offered for sale by the manufacturer or importer upon reasonable terms and conditions.

b. A manufacturer or importer from temporarily owning an interest in a motor vehicle dealership for the purpose of enhancing opportunities for persons who lack the financial resources to purchase the motor vehicle dealership without such assistance. A manufacturer or importer may temporarily own an interest in a motor vehicle dealership pursuant to this paragraph only if the manufacturer or importer enters into a contract with a person pursuant to which all of the following apply:

(1) The person operates the motor vehicle dealership.

(2) The person has made a significant financial investment in the motor vehicle dealership and is subject to loss on such investment.

(3) The person has an ownership interest in the motor vehicle dealership.

(4) The person will acquire full ownership of the motor vehicle dealership within a reasonable time under reasonable conditions.

c. A manufacturer or importer from owning an interest in, operating, or controlling a person whose primary business is renting motor vehicles and who is licensed as a used motor vehicle dealer.

d. A manufacturer of motor homes, as defined in section 321.1, or a manufacturer of school buses, as defined in section 321.1, from owning an interest in, operating, or controlling a motor vehicle dealer of the motor homes or school buses manufactured by that manufacturer or from being licensed as a motor vehicle dealer only of the motor homes or school buses manufactured by that manufacturer.

e. A manufacturer from owning a minority interest in an entity that owns and operates motor vehicle dealers, licensed under this chapter or the laws of the jurisdiction in which they are located, of the line-make manufactured by the manufacturer if all of the motor vehicle dealers owned and operated by the entity in this state are motor vehicle dealers of only the line-make manufactured by the manufacturer and if, on January 1, 2000, there were not less than one and not more than three motor vehicle dealers of that line-make

licensed under this chapter.

2001 Acts, ch 32, §30, 31, 40
 Subsection 13 amended
 Subsection 14, unnumbered paragraph 1 amended

322.5 License fees — temporary permits.

1. The license fee for a motor vehicle dealer is the sum of seventy dollars for a two-year license, one hundred forty dollars for a four-year license, or two hundred ten dollars for a six-year license for the licensee's principal place of business in each city or township and an additional twenty dollars for two years, forty dollars for four years, or sixty dollars for six years for each car lot which is in the city or township in which the principal place of business is located and which is not adjacent to that place, to be paid to the department at the time a license is applied for. In case the application is denied, the department shall refund the amount of the fee to the applicant. For the purposes of this section "*adjacent*" means that the principal place of business and each additional lot are adjoining parcels of property.

For the purposes of this subsection, parcels of property shall be deemed to be adjacent if the parcels are only separated by an alley, street, or highway that is not a controlled-access facility.

2. *a.* In addition to selling motor vehicles at the motor vehicle dealer's principal place of business and at car lots, a motor vehicle dealer may do any of the following:

(1) Display new motor vehicles at fairs, vehicle shows, and vehicle exhibitions, upon application for and receipt of a temporary permit issued by the department.

(2) Display, offer for sale, and negotiate sales of new motor vehicles at county or district fairs, as described in chapter 174, vehicle shows, and vehicle exhibitions, upon application for and receipt of a temporary permit issued by the department. Such activities may only be conducted at fairs, vehicle shows, and vehicle exhibitions that are held in the county of the motor vehicle dealer's principal place of business. A sale of a motor vehicle by a motor vehicle dealer shall not be completed and an agreement for the sale of a motor vehicle shall not be signed at a fair, vehicle show, or vehicle exhibition. All such sales shall be consummated at the motor vehicle dealer's principal place of business.

b. An application for a temporary permit under this subsection shall be made upon a form provided by the department and shall be accompanied by a ten dollar permit fee. The department may issue a temporary permit for a period not to exceed fourteen days.

3. A motor vehicle dealer may also, upon receipt of a temporary permit approved by the department, display and sell classic cars only at county fairs, as defined in chapter 174, vehicle shows, and vehicle exhibitions which have been approved by the department for purposes of classic

car display and sale and the provisions of section 322.3, subsection 9, shall not be applicable. Application for a temporary permit shall be made on forms provided by the department and shall be accompanied by a ten dollar permit fee. A permit shall be issued for a single period of not to exceed five days. Not more than three permits may be issued to a motor vehicle dealer in any one calendar year. For purposes of this subsection, "*classic car*" means a motor vehicle fifteen years old or older but less than twenty years old which is primarily of value as a collector's item and not as transportation.

4. A nonresident motor vehicle dealer, who is authorized by a written contract with a manufacturer or distributor of new motor trucks to sell at retail such new motor trucks, may display motor trucks within this state at qualified events approved by the department. The dealer must obtain a temporary permit from the department. An application for a temporary permit shall be made upon a form provided by the department and shall be accompanied by a ten dollar permit fee. Permits shall be issued for a period not to exceed fourteen days. The department shall issue a temporary permit under this subsection only if the qualified event for which the permit is issued meets all of the following conditions:

a. The sale of motor vehicles is not allowed during the qualified event.

b. The qualified event is conducted in a controlled area and is not open to the public generally.

c. The qualified event generally promotes the motor truck industry.

d. The qualified event is conducted within the area of responsibility that is specified in the motor vehicle dealer's contract with the manufacturer or distributor.

A temporary permit shall not be issued under this subsection unless the state in which the nonresident motor vehicle dealer is licensed extends by reciprocity similar privileges to a motor vehicle dealer licensed by this state.

5. A manufacturer, distributor, or dealer may, upon receipt of a temporary permit approved by the department, display new ambulances, new fire vehicles, and new rescue vehicles for educational purposes only at vehicle shows and vehicle exhibitions conducted for the express purpose of educating fire and rescue personnel in new technology and techniques for fire fighting and rescue efforts. Application for temporary permits shall be made upon forms provided by the department and shall be accompanied by a ten-dollar permit fee. Permits shall be issued for a single show or exhibition, not to exceed five consecutive days.

2001 Acts, ch 32, §32
 Subsection 2 stricken and rewritten

322.21 Remaining balance on trade vehicle.

The extension of credit by a retail seller to a re-

tail buyer, pursuant to a retail installment contract, of the amount actually paid or to be paid by the retail seller to discharge a purchase-money security interest, as provided in section 554.9103, on a motor vehicle traded in by the retail buyer shall not subject the retail seller to the provisions of chapter 536 or 536A.

2000 Acts, ch 1149, §167, 187
2000 amendments to this section are effective July 1, 2001; 2000 Acts, ch 1149, §187
Section amended

322.28 Distributor or wholesaler's license.

A distributor or wholesaler of new motor vehicles shall not sell or offer for sale a new motor vehicle at retail unless licensed as a new motor vehicle dealer. A licensed distributor or wholesaler of a new motor vehicle shall not register or title a new motor vehicle held for sale and shall transfer ownership of a new motor vehicle by assigning the manufacturer's statement of origin for the vehicle.

2001 Acts, ch 32, §33, 40
Section amended

322.29 Issuance of license — fees.

1. Application for license shall be made to the department by a manufacturer, distributor, or wholesaler, in a form and containing information as the department requires and shall be accompanied by the required license fee. The license shall be granted or refused within thirty days after application, and shall expire, unless sooner revoked or suspended, on December 31 of the calendar year for which it is granted. A licensee shall have the month of December of the calendar year for which the license was granted and the following month of January to renew the license. A person who fails to renew a license by the end of this time period

and desires to hold a license shall file a new license application and pay the required fee.

2. License fees for each calendar year, or part thereof, shall be as follows effective January 1, 1998:

a. For a motor vehicle manufacturer, thirty-five dollars.

b. For a new motor vehicle distributor or wholesaler, twenty dollars.

c. For a used motor vehicle distributor or wholesaler, ten dollars.

3. A license shall not be issued to a person as a distributor or wholesaler for a new motor vehicle model unless the distributor or wholesaler has written authorization from the manufacturer as a distributor or wholesaler of the motor vehicle model.

4. Upon payment of the license fee as provided in this section, a person who rebuilds new completed motor vehicles by fabricating, altering, adding, or replacing essential parts, components, or equipment for the purpose of building an ambulance, rescue vehicle, fire vehicle, or towing or recovery vehicle as defined in chapter 321 may be issued a license as a wholesaler of new motor vehicles of the make and model rebuilt without written authorization from the manufacturer.

5. Upon payment of the license fee as provided in this section, a person who installs cranes, hook loaders, buckets, aerial ladders, tanks, or special equipment on new completed motor trucks with a gross vehicle weight rating of fourteen thousand five hundred pounds or more may be issued a license as a wholesaler of new motor vehicles of the make and model on which the equipment is installed without written authorization from the manufacturer.

2001 Acts, ch 32, §34
Subsection 5 amended

CHAPTER 322A

MOTOR VEHICLE FRANCHISERS

322A.1 Definitions.

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

1. "Additional motor vehicle dealership" includes a facility providing manufacturer-authorized or distributor-authorized service or warranty work for motor vehicles, except motor homes, of a line-make in a community in which the same line-make is represented.

2. "Community" means the franchisee's area of responsibility as stipulated in the franchise.

3. "Consumer care" means to perform, for the public, necessary maintenance and repairs to motor vehicles.

4. "Department" means the state department of transportation.

5. "Franchise" means a contract between two

or more persons when all of the following conditions are included:

a. A commercial relationship of definite duration or continuing indefinite duration is involved.

b. The franchisee is granted the right to offer and sell motor vehicles manufactured or distributed by the franchiser.

c. The franchisee, as an independent business, constitutes a component of franchiser's distribution system.

d. The operation of franchisee's business is substantially associated with the franchiser's trademark, service mark, trade name, advertising, or other commercial symbol designating the franchiser.

e. The operation of the franchisee's business is substantially reliant on franchiser for the contin-

ued supply of motor vehicles, parts, and accessories.

6. “*Franchisee*” means a person who receives motor vehicles from the franchiser under a franchise and who offers and sells such motor vehicles to the general public.

7. “*Franchiser*” means a person who manufactures or distributes motor vehicles and who may enter into a franchise as hereinafter defined.

8. “*Motor vehicle*” means “*motor vehicles*” as defined in chapter 321 which are subject to registration pursuant to the provisions thereof.

9. “*Person*” means a sole proprietor, partnership, corporation, or any other form of business organization.

10. “*Substantially detrimental*” means that, by a preponderance of the evidence, the market share of the franchiser’s motor vehicles in the community will be significantly reduced in comparison to the franchiser’s historical market share in the community.

11. “*Termination or noncontinuance*” includes a reduction of the geographic area of a community.

2001 Acts, ch 32, §35, 40
NEW subsection 10 and former subsection 10 renumbered as 11

322A.11 Condition barring change in franchise.

Notwithstanding the terms, provisions, or conditions of any agreement or franchise, the following shall not be considered facts supporting a finding of good cause for the termination or noncontinuation of a franchise, or for entering into a franchise for the establishment of an additional dealership in a community for the same line-make:

1. The sole fact that franchiser desires further penetration of the market.

2. The change of ownership of the franchisee’s dealership or the change of executive management of the franchisee’s dealership, unless the franchiser, having the burden of proof, proves that such change of ownership or executive management will be substantially detrimental to the distribution of the franchiser’s motor vehicles in the community and that good cause for the termination or noncontinuation of the franchise or for the establishment of an additional dealership otherwise exists.

3. The fact that the franchisee refused to purchase or accept delivery of any motor vehicle or vehicles, parts, accessories or any other commodity or service not ordered by the franchisee.

4. The fact that the dealership moved to another facility and location within the dealership’s community which are equal to or superior to the dealership’s former location and facility or the fact that the dealership added an additional line-make to the dealership if the dealership’s facility is adequate to accommodate the additional line-make.

5. The fact that the dealership does not meet an index or standard established by the franchiser, unless the franchiser proves that the failure of the dealership to meet the index or standard will be substantially detrimental to the distribution of the franchiser’s motor vehicles in the community and that good cause for the termination or noncontinuation of the franchise or for the establishment of an additional dealership otherwise exists.

2001 Acts, ch 32, §36, 37, 40
Unnumbered paragraph 1 amended
Subsections 2 and 5 amended

CHAPTER 322B

MANUFACTURED OR MOBILE HOME RETAILERS

Court action required for termination of installment contracts during military service;
2001 Acts, 2nd Ex, ch 1, §29, 31, 35, 36
Court action or parties agreement required for disposition of property under obligation secured by mortgage, trust deed, or other security during military service;
2001 Acts, 2nd Ex, ch 1, §29, 32, 35, 36

322B.1 Short title.

This chapter may be cited as the “*Manufactured or Mobile Home Retailers Licensing Act*”.

2001 Acts, ch 153, §1
Section stricken and rewritten

322B.2 Definitions.

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

1. “*Department*” means the state department of transportation.
2. “*Home*” means a manufactured home, mobile home, or modular home.
3. “*Manufactured home*” means a factory-built

structure built under the authority of 42 U.S.C. § 5403, that is required by federal law to display a seal required by the United States department of housing and urban development, and was constructed on or after June 15, 1976.

4. “*Manufactured or mobile home distributor*” means a person who sells or distributes manufactured or mobile homes to manufactured or mobile home retailers.

5. “*Manufactured or mobile home manufacturer*” means a person engaged in the business of fabricating or assembling manufactured or mobile homes.

6. “*Manufactured or mobile home retailer*” means a person who, for a commission or other thing of value, sells, exchanges, or offers or attempts to negotiate a sale or exchange of an interest in a home or who is engaged wholly or in part in the business of selling homes, whether or not the homes are owned by the retailer. “*Manufactured or mobile home retailer*” does not include any of the following:

a. A receiver, trustee, administrator, executor, guardian, attorney, or other person appointed by or acting under the judgment or order of a court to transfer an interest in a home.

b. A person transferring a home registered in the person’s name and used for personal, family, or household purposes, if the transfer is an occasional sale and is not part of the business of the transferor.

c. A person who transfers an interest in a home only as an incident to engaging in the business of financing new or used homes.

d. A person who exclusively sells modular homes.

7. “*Mobile home*” means a structure, transportable in one or more sections, which exceeds eight feet in width and thirty-two feet in length, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to one or more utilities. A “*mobile home*” is not built to a mandatory building code, contains no state or federal seals, and was built before June 15, 1976.

8. “*Modular home*” means a factory-built structure 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 displays a seal issued by the state building code commissioner.

9. “*New home*” means a home that has not been sold at retail.

10. “*Preowned home*” means a home that has been previously sold at retail.

11. “*Retailer’s inventory*” means homes offered for sale at the retailer’s licensed address or at any mobile home park or land-leased community so long as the title of the home is in the retailer’s name and the home is not being occupied.

12. “*Sell at retail*” means to sell a home to a person who will devote it to a consumer use.

2001 Acts, ch 153, §2; 2001 Acts, ch 176, §66, 82
Section stricken and rewritten

322B.3 Manufactured or mobile home retailer license — procedure.

1. *License application.* A manufactured or mobile home retailer shall file in the office of the department an application for license as a manufactured or mobile home retailer in the same manner as a motor vehicle dealer applicant under section 322.4 or as the department may prescribe. A

manufactured or mobile home retailer license may be issued in the same manner as a motor vehicle dealer license pursuant to section 322.7.

2. *License fees.* The license fee for a manufactured or mobile home retailer is seventy dollars for a two-year license, one hundred forty dollars for a four-year license, or two hundred ten dollars for a six-year license. If the application is denied, the department shall refund the fee. Fees and funds accruing from the administration of this chapter shall be accounted for and paid by the department to the treasurer of state monthly for deposit in the road use tax fund of the state.

3. *Surety bond.* Before the issuance of a manufactured or mobile home retailer’s license, an applicant for a license shall file with the department a surety bond executed by the applicant as principal and executed by a corporate surety company, licensed and qualified to do business within this state, which bond shall run to the state of Iowa, be in the amount of fifty thousand dollars, and be conditioned upon the faithful compliance by the applicant as a retailer with all of the statutes of this state regulating the business of the retailer and indemnifying any person dealing or transacting business with the retailer in connection with a manufactured or mobile home from a loss or damage occasioned by the failure of the retailer to comply with this chapter, including, but not limited to, the furnishing of a proper and valid document of title to the manufactured or mobile home involved in the transaction.

4. *Permits for fairs, shows, and exhibitions.* Manufactured or mobile home retailers, in addition to selling homes at their principal place of business and lots, may, upon receipt of a temporary permit approved by the department, display and offer new manufactured homes for sale and negotiate sales of new manufactured homes at fairs, shows, and exhibitions. Application for temporary permits shall be made upon forms provided by the department and shall be accompanied by a ten dollar permit fee. Temporary permits shall be issued for a period not to exceed fourteen days.

5. *Manufactured or mobile home hookups.* A manufactured or mobile home retailer or an employee of a manufactured or mobile home retailer may perform water, gas, electrical, and other utility service connections in a manufactured or mobile home space, or within ten feet of such space, located in a manufactured home community or mobile home park, and the retailer or an employee of the retailer may install a tiedown system on a manufactured or mobile home located in a manufactured home community or mobile home park. The connections are subject to inspection and approval by local building code officials and the manufactured or mobile home retailer shall pay the inspection fee, if any.

2001 Acts, ch 32, §38; 2001 Acts, ch 153, §3
See Code editor’s note to §12.65
Section amended

322B.4 License application and fees.

Upon application and payment of a thirty-five dollar fee, a person may be licensed as a manufacturer or distributor of manufactured or mobile homes. The application shall be in the form and shall contain information as the department prescribes. The license shall be granted or refused within thirty days after application. The license expires, unless sooner revoked or suspended by the department, on December 31 of the calendar year for which the license was granted. A licensee shall have the month of December of the calendar year for which the license was granted and the following month of January to renew the license. A person who fails to renew a license by the end of this time period and desires to hold a license shall file a new license application and pay the required fee.

2001 Acts, ch 153, §4
Section amended

322B.5 Notification.

The department shall notify the state building code commissioner of each license issued to a manufactured or mobile home retailer.

2001 Acts, ch 153, §5
Section amended

322B.6 Revocation, suspension, and denial of license.

The department may revoke, suspend, or refuse the license of a manufactured or mobile home retailer, manufacturer or mobile home distributor, as applicable, if the department finds that the manufacturer or mobile home retailer, manufacturer, or distributor is guilty of any of the following acts or offenses:

1. Fraud in procuring a license.
2. Knowingly making misleading, deceptive, untrue or fraudulent representations in the business of a manufactured or mobile home retailer, manufacturer, or distributor or engaging in unethical conduct or practice harmful or detrimental to the public.
3. Conviction of a felony related to the business of a manufactured or mobile home retailer, manufacturer, or distributor. A copy of the record of conviction or plea of guilty shall be sufficient evidence for the purposes of this section.
4. Failing upon the sale or transfer of a manufactured or mobile home to deliver to the purchaser or transferee of the manufactured or mobile

home sold or transferred, a manufacturer's or importer's certificate, or a certificate of title duly assigned, as provided in chapter 321.

5. Failing upon the purchasing or otherwise acquiring of a manufactured or mobile home to obtain a manufacturer's or importer's certificate, a new certificate of title, or a certificate of title duly assigned as provided in chapter 321.

6. Failing to apply for and obtain from a county treasurer a certificate of title for a used manufactured or mobile home, titled in Iowa, acquired by the retailer within thirty days from the date of acquisition, as required under section 321.45, subsection 4.

In accordance with chapters 10A and 17A, each person whose license or application is revoked, suspended, or refused shall be provided an opportunity for a hearing before the department of inspections and appeals.

2001 Acts, ch 153, §6
Section amended

322B.8 Unlawful practice.

It is unlawful for a person to engage in business as a manufactured or mobile home retailer, manufacturer or mobile home distributor in this state without first acquiring and maintaining a license in accordance with this chapter. A person convicted of violating the provisions of this section is guilty of a serious misdemeanor.

2001 Acts, ch 153, §7
Section amended

322B.9 Manufactured home, mobile home, and modular home retail installment contract — finance charge.

A retail installment contract or agreement for the sale of a manufactured home, mobile home, or modular home may include a finance charge not in excess of an amount equivalent to one and three-fourths percent per month simple interest on the declining balance of the amount financed.

"Amount financed" shall be as defined in section 537.1301.

The limitations contained in this section do not apply in a transaction referred to in section 535.2, subsection 2. With respect to a consumer credit sale, as defined in section 537.1301, the limitations contained in this section supersede conflicting provisions of chapter 537, article 2, part 2.

2001 Acts, ch 153, §8
Section amended

CHAPTER 322C

TRAVEL TRAILER DEALERS, MANUFACTURERS AND DISTRIBUTORS

Court action required for termination of installment
contracts during military service;
2001 Acts, 2nd Ex, ch 1, §29, 31, 35, 36
Court action or parties agreement required for disposition
of property under obligation secured by mortgage, trust deed,
or other security during military service;
2001 Acts, 2nd Ex, ch 1, §29, 32, 35, 36

322C.3 Prohibited acts — exception.

1. A person shall not engage in this state in the business of selling at retail new travel trailers of any make, or represent or advertise that the person is engaged or intends to engage in such business in this state, unless the person is authorized by a contract in writing between that person and the manufacturer or distributor of that make of new travel trailers to sell the trailers in this state, and unless the department has issued to the person a license as a travel trailer dealer for the same make of travel trailer.

2. A person, other than a licensed travel trailer dealer in new travel trailers, shall not engage in the business of selling at retail used travel trailers or represent or advertise that the person is engaged or intends to engage in such business in this state unless the department has issued to the person a license as a used travel trailer dealer.

3. A person is not required to obtain a license as a travel trailer dealer if the person is disposing of a travel trailer acquired or repossessed, so long as the person is exercising a power or right granted by a lien, title-retention instrument, or security agreement given as security for a loan or a purchase money obligation.

4. A travel trailer dealer shall not enter into a contract, agreement, or understanding, expressed or implied, with a manufacturer or distributor that the dealer will sell, assign, or transfer an agreement or contract arising from the retail installment sale of a travel trailer only to a designated person or class of persons. Any such condition, agreement or understanding between a manufacturer or distributor and a travel trailer dealer is against the public policy of this state and is unlawful and void.

5. A manufacturer or distributor of travel trailers or an agent or representative of the manufacturer or distributor, shall not refuse to renew a contract for a term of less than five years, and shall not terminate or threaten to terminate a contract, agreement or understanding for the sale of new travel trailers to a travel trailer dealer in this state without just, reasonable and lawful cause or because the travel trailer dealer failed to sell, assign or transfer a contract or agreement arising from the retail sale of a travel trailer to

only a person or a class of persons designated by the manufacturer or distributor.

6. A travel trailer dealer shall not make and enter into a security agreement or other contract unless the agreement or contract meets the following requirements:

a. The security agreement or contract is in writing, is signed by both the buyer and the seller and is complete as to all essential provisions prior to the signing of the agreement or contract by the buyer except that, if delivery of the travel trailer is not made at the time of the execution of the agreement or contract, the identifying numbers of the travel trailer or similar information and the due date of the first installment may be inserted in the agreement or contract after its execution.

b. The agreement or contract complies with the Iowa consumer credit code, where applicable.

7. A manufacturer or distributor of travel trailers or an agent or representative of a manufacturer or distributor shall not coerce or attempt to coerce a travel trailer dealer to accept delivery of a travel trailer or travel trailer parts or accessories, or any other commodity which has not been ordered by the dealer.

8. Except under subsection 9 of this section, a person licensed under section 322C.4 shall not, either directly or through an agent, salesperson or employee, engage or represent or advertise that the person is engaged or intends to engage in this state, in the business of buying or selling new or used travel trailers on Sunday.

9. A travel trailer dealer may display new travel trailers at fairs, shows, and exhibitions on any day of the week as provided in this subsection. Travel trailer dealers, in addition to selling travel trailers at their principal place of business and lots, may, upon receipt of a temporary permit approved by the department, display and offer new travel trailers for sale and negotiate sales of new travel trailers at fairs, shows, and exhibitions. Application for temporary permits shall be made upon forms provided by the department and shall be accompanied by a ten dollar permit fee. Temporary permits shall be issued for a period not to exceed fourteen days.

2001 Acts, ch 32, §39
Subsection 9 amended

CHAPTER 322F

AGRICULTURAL EQUIPMENT DEALERSHIP AGREEMENTS

322F.3 Termination of agreement — repurchase of equipment.

1. If a dealership agreement is terminated by cancellation or nonrenewal, the supplier must repurchase equipment and parts in the dealer's inventory and must repurchase special tools and computer hardware or software required for the dealership. The repurchase is subject to the following conditions:

a. The supplier must pay to the dealer or credit the dealer's account with one hundred percent of the net cost of all unused complete equipment including attachments. The equipment must be in new condition and purchased by the dealership from the supplier within twenty-four months preceding notification by either party of an intent to terminate the contract.

b. The supplier must pay to the dealer or credit the dealer's account with ninety percent of the net price for repair parts, including superseded parts listed in the price lists or catalogs in use by the supplier on the date of termination. The supplier shall also pay the dealer or credit the dealer's account with five percent of the net price on the date of termination on all parts returned for the dealer's handling, packing, and loading of the parts to be returned to the supplier. However, the supplier is not required to pay or credit the five percent if the supplier elects to perform the handling, packing, and loading.

c. The supplier shall pay to the dealer or credit the dealer's account with the amortized value of any specific computer hardware or software that the supplier required the dealer to purchase within the five years immediately preceding notification by either party of an intent to terminate the contract.

d. The supplier shall pay to the dealer or credit the dealer's account with the following amounts

for special repair tools that were unique to the supplier's product line and that are in complete and resalable condition:

(1) Seventy-five percent of the net cost of special repair tools purchased within the three years immediately preceding notification by either party of an intent to terminate the contract.

(2) Fifty percent of the net cost of special repair tools purchased within the four to six years immediately preceding notification by either party of an intent to terminate the contract.

e. The supplier shall only be required to repurchase the items described in paragraphs "c" and "d" if the items are free and clear of all claims, liens, and encumbrances, to the satisfaction of the supplier.

2. Upon payment or allowance of a credit to the dealer's account as required in this section, the title to the repurchased equipment is transferred to the supplier making the repurchase, and the supplier may take immediate possession of the repurchased equipment.

3. The supplier must make payment or allowance of a credit as required under this section not later than ninety days from the date that the supplier takes possession of the repurchased equipment.

4. This section does not require repurchase from the dealer of repair parts which have a limited storage life or are otherwise subject to deterioration, including but not limited to rubber items, gaskets, and batteries. This section also does not require repurchase from the dealer of parts in broken or damaged packages, single repair parts priced as a set of two or more items, or repair parts which because of their condition are not resalable as new parts without new packaging or reconditioning.

2001 Acts, ch 42, §1, 2
Subsection 1, unnumbered paragraph 1 amended and NEW paragraphs c - e

CHAPTER 325A

MOTOR CARRIER AUTHORITY

325A.1 Definitions.

As used in this chapter:

1. "*Bulk liquid commodities*" means liquid commodities or compressed gases transported in a vehicle having a total cargo tank shell capacity of more than two thousand gallons.

2. "*Department*" means the state department of transportation.

3. "*Highway*" means a street, road, bridge, or thoroughfare of any kind in this state.

4. "*Interstate motor carrier number*" means a United States department of transportation number or motor carrier number issued by the federal

highway administration.

5. "*Intrastate*" means a movement of property or passengers from one location to another within this state. "*Intrastate*" does not include transportation of property or passengers which is a furtherance of an interstate movement.

6. "*Motor carrier*" means a person defined in subsection 8, 9, or 10.

7. "*Motor carrier certificate*" means a certificate issued by the department to any person transporting passengers on any highway of this state for hire. This certificate is transferable.

8. "*Motor carrier of bulk liquid commodities*"

means a person engaged in the transportation, for hire, of bulk liquid commodities upon a highway in this state.

9. “*Motor carrier of household goods*” means a person engaged in the transportation, for hire, of personal effects and property used or to be used in a dwelling, and includes the following:

a. Furniture, fixtures, equipment, and the property of stores, offices, museums, institutions, hospitals, or other establishments when a part of the stock, equipment, or supply of such establishment; except, this paragraph shall not be construed to include the stock-in-trade of any establishment, except when transported as an incident to the removal of the establishment from one location to another.

b. Articles including objects of art, displays, and exhibits, which because of their unusual nature or value, require the specialized handling and equipment usually employed in moving household goods.

10. “*Motor carrier of property*” means a person engaged in the transportation, for hire, of property by motor vehicle including a carrier transporting liquid commodities or compressed gases in a vehicle having a total cargo tank shell capacity of two thousand gallons or less.

11. “*Motor carrier permit*” means a permit issued by the department to any person operating any motor vehicle on any highway of this state to transport property for hire. A motor carrier permit is not transferable unless it was issued to a motor carrier of household goods.

12. “*Motor vehicle*” means an automobile, motor truck, truck tractor, road tractor, motor bus, or other self-propelled vehicle, or a trailer, semitrailer, or other device used in connection with the transportation of property or passengers. “*Motor vehicle*” does not include a motor vehicle owned by a school district or used exclusively in conveying school children to and from school or school activities.

13. “*Private carrier*” means a person who provides transportation of property or passengers by motor vehicle, is not a for-hire motor carrier, or transports commodities of which the person is the owner, lessee, or bailee and the transportation is a furtherance of the person’s primary business or occupation.

14. “*Transportation for hire*” means all transportation of property or passengers made available by a person for compensation.

2001 Acts, ch 132, §18, 19
NEW subsection 1 and former subsections 1 – 6 renumbered as 2 – 7
Subsection 8 amended
Former subsection 7 renumbered as 9 and former subsections 9 – 13 renumbered as 10 – 14
Subsection 10 amended

325A.3 Application and issuance of permit or certificate.

1. Upon the filing of an application by a motor carrier and compliance with the terms and conditions of this chapter, the department shall issue to the applicant a permit or certificate. The actual

operation by a motor carrier of a motor vehicle shall not begin without the permit or certificate being issued by the department.

2. All applications shall be in writing and contain the following:

a. The name and tax identification number of the person making the application.

b. The applicant’s principal place of business.

c. The type of permit or certificate being requested.

d. A signed statement agreeing to comply with all applicable safety regulations as prescribed by the department.

e. A copy of all existing tariffs provided to the department for approval by motor carriers of household goods.

f. A financial statement completed by motor carriers of bulk liquid commodities or passengers from which the department can determine the financial fitness of the applicant to engage in the transport of bulk liquid commodities or passengers.

g. A verification of liability and property damage insurance coverage as required in section 325A.6, in a form prescribed by the department.

3. The provisions of subsection 2, paragraph “f”, and subsection 4 shall not apply to the transportation of dairy products.

4. Motor carriers of bulk liquid commodities or passengers shall complete a motor carrier safety education seminar provided by or approved by the department. This seminar must be completed within six months of the permit or certificate issuance.

5. A motor carrier shall keep a permit or certificate issued to the motor carrier under this section, or a copy of such permit or certificate, in the vehicle being operated by the motor carrier and shall show the permit or certificate, or copy thereof, to any peace officer upon request.

6. The department may deny issuance of a permit or certificate if the department determines that evidence exists showing that the motor carrier cannot comply with the requirements of this chapter or the rules adopted pursuant to this chapter, including safety regulations and financial fitness and insurance requirements.

2001 Acts, ch 132, §20, 21

For applicable scheduled fines, see §805.8A, subsection 13, paragraph 8
Subsection 2, paragraph f amended
Subsection 4 amended

325A.8 Required marking.

1. The motor carrier shall attach distinctive markings or tags to each motor vehicle. If a motor vehicle has both an interstate and intrastate motor carrier number, only the interstate motor carrier number must be displayed.

2. If a motor carrier is renting a vehicle on a daily basis, a copy of the lease must be carried in the vehicle. Violation of this section is a scheduled violation subject to the fine provided in section 805.8A, subsection 13, paragraph “d”.

2001 Acts, ch 137, §5

Unnumbered paragraphs 1 and 2 editorially designated as subsections 1 and 2

Internal reference change applied

325A.24 Scheduled fines — penalty.

A person who violates this chapter or a rule adopted pursuant to this chapter for which a penalty is not otherwise established, or who aids or abets a person in a failure to comply with this

chapter or a rule adopted pursuant to this chapter, is subject to the fine provided in section 805.8A, subsection 13, paragraph “e”.

2001 Acts, ch 137, §5
Internal reference change applied

CHAPTER 326

REGISTRATION RECIPROCITY

326.22 Operational laws of Iowa applicable.

A nonresident registered vehicle is subject to all laws and rules governing the operation of such vehicle on the highways of this state. The registration number plates, stickers, or other identification assigned and furnished to any vehicle for the current registration year by the state in which the vehicle is registered shall be displayed on the vehicle substantially as provided in chapter 321 for vehicles registered pursuant to the provisions of this chapter. In addition, a fee set by the department to cover actual cost shall be charged for each plate, sticker, or other identification furnished for each vehicle registered in accordance with the provisions of this section or extended reciprocity in accordance with the provisions of this section. A charge shall not be made for the initial registration receipt or cab card issued for each vehicle registered pursuant to an apportionment registration agreement. A fee set by the department to cover actual costs shall be charged for issuance of duplicate plates, stickers or other identification required, duplicate registration receipts, and duplicate cab cards.

For applicable scheduled fines, see §805.8A, subsection 13, paragraph a
Section not amended; footnote added

326.23 Trip permits.

1. The owner of a commercial vehicle which is properly registered and licensed in some other jurisdiction and is to be operated occasionally on highways in this state, may in lieu of payment of the annual registration fee for such vehicle obtain a trip permit authorizing operation of the vehicle on the highways of this state in interstate commerce for a period of not to exceed seventy-two hours. The fee for the trip permit shall be ten dollars.

2. The department may enter into agreements with owners and operators of truck stops to permit the owners and operators of truck stops to issue trip permits subject to any conditions imposed by the department. In addition to the trip permit fee, the owner or operator of a truck stop may charge an issuance fee of not more than one dollar. For the purposes of this section, “*truck stop*” means any place of business which sells fuel normally used by trucks and which is open twenty-four hours per day.

For applicable scheduled fines, see §805.8A, subsection 13, paragraph a
Section not amended; footnote added

CHAPTER 327B

REGISTRATION OF CARRIER AUTHORITY

327B.1 Authority secured and registered.

1. 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.

2. 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.

3. 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.

4. The state department of transportation may execute reciprocity agreements with authorized representatives of any state exempting non-residents 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.

5. Fees may be subject to reduction or proration pursuant to sections 326.5 and 326.32.

For applicable scheduled fines, see §805.8A, subsection 13, paragraphs f and g

Unnumbered paragraphs 1 – 5 editorially designated as subsections 1

– 5

Section not amended; footnote added

CHAPTER 330A

AVIATION AUTHORITIES

330A.17 Statute complete and additional authority.

The powers conferred by this chapter shall be in addition and supplemental to any other law and this chapter shall not be construed so as to repeal any other law, except to the extent of any conflict between the provisions of this chapter and the provisions of any other law, in which event the provisions of this chapter shall be controlling and shall, to the extent of any such conflict, supersede the provisions of any other law. This chapter is intended to and shall provide an alternative and complete method for the exercise of the powers granted by this chapter, and the aviation facilities

authorized by this chapter may be constructed, acquired, or improved and bonds or other obligations issued pursuant to this chapter upon compliance with the provisions of this chapter without regard to or necessity for compliance with the limitations or restrictions contained in any other law. No approval of the registered voters or qualified freeholders of the state, or of any other political subdivision or taxing unit or agency thereof, or of the member municipalities shall be required for the issuance of any bonds by an authority pursuant to this chapter.

2001 Acts, ch 56, §20
Section amended

CHAPTER 331

COUNTY HOME RULE IMPLEMENTATION

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 eligible electors residing inside the county and outside of the corporate limits of the city equal in number to at least ten percent of the registered voters residing within the county and outside of the corporate limits of the city and signatures of eligible electors residing within the city equal in number to 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 registered 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.

2001 Acts, ch 56, §21
Subsection 1 amended

331.301 General powers and limitations.

1. A county may, except as expressly limited by the Constitution, and if not inconsistent with the laws of the general assembly, exercise any power and perform any function it deems appropriate to protect and preserve the rights, privileges, and property of the county or of its residents, and to preserve and improve the peace, safety, health, welfare, comfort, and convenience of its residents. This grant of home rule powers does not include

the power to enact private or civil law governing civil relationships, except as incident to an exercise of an independent county power.

2. A power of a county is vested in the board, and a duty of a county shall be performed by or under the direction of the board except as otherwise provided by law.

3. The enumeration of a specific power of a county, the repeal of a grant of power, or the failure to state a specific power does not limit or restrict the general grant of home rule power conferred by the Constitution and this section. A county may exercise its general powers subject only to limitations expressly imposed by a state law.

4. An exercise of a county power is not inconsistent with a state law unless it is irreconcilable with the state law.

5. A county shall substantially comply with a procedure established by a state law for exercising a county power unless a state law provides otherwise. If a procedure is not established by state law, a county may determine its own procedure for exercising the power.

6. A county shall not set standards and requirements which are lower or less stringent than those imposed by state law, but may set standards and requirements which are higher or more stringent than those imposed by state law, unless a state law provides otherwise.

7. A county shall not levy a tax unless specifically authorized by a state statute.

8. A county is a body corporate for civil and political purposes and shall have a seal as provided in section 331.552, subsection 4.

9. Supervisors and other county officers may administer oaths and take affirmations as pro-

vided 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 authorize 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.

However, if the principal amount of a lease or lease-purchase contract pursuant to this subparagraph is less than twenty-five thousand dollars, the board may authorize the lease or lease-purchase contract without following the authorization procedures of section 331.443.

(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 adminis-

tered 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.

15. a. A county may adopt and enforce an ordinance requiring the construction of a storm shelter at a manufactured home community or mobile home park which is constructed after July 1, 1999. In lieu of requiring construction of a storm shelter, a county may require a community or park owner to provide a plan for the evacuation of community or park residents to a safe place of shelter in times of severe weather including tornadoes and high winds if the county determines that a safe place of shelter is available within a reasonable distance of the manufactured home community or mobile home park for use by community or park residents. Each evacuation plan prepared pursuant to this subsection shall be filed with, and approved by, the local emergency management agency. If construction of a storm shelter is required, an ordinance adopted or enforced pursuant to this subsection shall not include any of the following requirements:

(1) That the size of the storm shelter be larger than the equivalent of seven square feet for each manufactured or mobile home space in the manufactured home community or mobile home park.

(2) That the storm shelter include a restroom if the shelter is used exclusively as a storm shelter.

(3) That the storm shelter exceed the construction specifications approved by a licensed professional engineer and presented by the owner of the manufactured home community or mobile home park.

(4) That the shelter be located any closer than one thousand three hundred twenty feet from any manufactured or mobile home in the manufactured home community or mobile home park.

b. For the purposes of this subsection:

(1) "*Manufactured home community*" means the same as land-leased community defined in sections 335.30A and 414.28A.

(2) "*Manufactured home community or mobile home park*" means a manufactured home community or mobile home park as defined in section 562B.7.

(3) "*Storm shelter*" means a single structure or multiple structures designed to provide persons with temporary protection from a storm.

2001 Acts, ch 143, §1; 2001 Acts, ch 153, §9, 16

See Code editor's note to §12.65

Terminology change applied

Subsection 10, paragraph e, subparagraph (1), NEW unnumbered paragraph 2

Subsection 15 amended

331.303 General duties of the board.

The board shall:

1. Keep record books as follows:

a. A “*minute book*” which records all orders and decisions other than those relating to drainage districts. The minute book or a separate index book must contain an alphabetical index by subject matter categories of the proceedings shown by the minutes.

b. A “*warrant book*” which records each warrant drawn in the order of issuance by number, date, amount, and name of drawee, and refers to the order in the minute book authorizing its drawing. The board may authorize the auditor to issue checks in lieu of warrants. If the issuance of checks is authorized, the word “check” shall be substituted for the word “warrant” in those sections of this chapter and chapters 6B, 11, 35B, 336, 349, 350, 427B, and 468 in which the issuance of a check is authorized in lieu of a warrant.

c. A “*claim register*” which records all claims for money filed against the county. Claims shall be numbered consecutively in order of filing and entered alphabetically by the claimant’s name. The claim register shall show the date of filing, the number of the claim and its general nature, and the action of the board on the claim including the fund against which it is allowed if it is allowed. The claims allowed at each meeting shall be listed in the minute book by claim number.

2. Maintain its records in accordance with chapter 22.

3. Act upon applications for cigarette tax permits in accordance with chapter 453A.

4. Act upon applications for liquor control licenses and retail beer permits in accordance with section 123.32.

5. Proceed upon a petition to establish an official county fair and pay tax funds to it in accordance with section 174.10.

6. Select official newspapers and cause official publications to be made in accordance with chapters 349 and 618.

7. Adopt rules relating to the labor of prisoners in the county jail in accordance with sections 356.16 to 356.19, and may establish the cost of board and provide for the transportation of certain prisoners in accordance with section 356.30.

8. Divide the county into townships, and proceed upon a petition to divide, dissolve or change the name of a township in accordance with chapter 359.

9. Approve the written investment policy for the county required under section 12B.10B.

10. Cause on-site inspections of pipeline construction projects as required in section 479.29, subsection 2, and the board may petition for rules as provided in that section.

11. Defend, save harmless, and indemnify its officers, employees, and agents against tort claims, and may settle the claims, in accordance

with sections 670.8 and 670.9.

12. Perform other duties as required by law.

2001 Acts, ch 45, §1; 2001 Acts, ch 176, §67
Subsection 1, paragraph b amended

331.321 Appointments — removal.

1. The board shall appoint:

a. A veterans memorial commission in accordance with sections 37.9 to 37.15, when a proposition to erect a memorial building or monument has been approved by the voters.

b. A county conservation board in accordance with section 350.2, when a proposition to establish the board has been approved by the voters.

c. The members of the county board of health in accordance with section 137.4.

d. One member of the convention to elect the state fair board as provided in section 173.2, subsection 3.

e. A temporary board of community mental health center trustees in accordance with section 230A.4 when the board decides to establish a community mental health center, and members to fill vacancies in accordance with section 230A.6.

f. The members of the service area advisory board in accordance with section 217.43.

g. A county commission of veteran affairs in accordance with sections 35B.3 and 35B.4.

h. A general assistance director in accordance with section 252.26.

i. One or more county engineers in accordance with sections 309.17 to 309.19.

j. A weed commissioner in accordance with section 317.3.

k. A county medical examiner in accordance with section 331.801, and the board may provide facilities, deputy examiners, and other employees in accordance with that section.

l. Two members of the county compensation board in accordance with section 331.905.

m. Members of an airport zoning commission as provided in section 329.9, if the board adopts airport zoning under chapter 329.

n. Members of an airport commission in accordance with section 330.20 if a proposition to establish the commission has been approved by the voters.

o. Two members of the civil service commission for deputy sheriffs in accordance with section 341A.2 or 341A.3, and the board may remove the members in accordance with those sections.

p. A temporary board of hospital trustees in accordance with sections 347.9 and 347.10 if a proposition to establish a county hospital has been approved by the voters.

q. An initial board of hospital trustees in accordance with section 347A.1 if a hospital is established under chapter 347A.

r. A county zoning commission, an administrative officer, and a board of adjustment in accordance with sections 335.8 to 335.11, if the board

adopts county zoning under chapter 335.

s. A board of library trustees in accordance with sections 336.4 and 336.5, if a proposition to establish a library district has been approved by the voters, or section 336.18 if a proposition to provide library service by contract has been approved by the voters.

t. Local representatives to serve with the city development board as provided in section 368.14.

u. Members of a city planning and zoning commission and board of adjustment when a city extends its zoning powers outside the city limits, in accordance with section 414.23.

v. A list of residents eligible to serve as a compensation commission in accordance with section 6B.4, in condemnation proceedings under chapter 6B.

w. Members of the county judicial magistrate appointing commission in accordance with section 602.6503.

x. A member of the judicial district department of corrections as provided in section 905.3, subsection 1, paragraph "a".

y. Members of a county enterprise commission or joint county enterprise commission if the commission is approved by the voters as provided in section 331.471.

z. Other officers and agencies as required by state law.

2. If the board proposes to appoint a county surveyor, it shall appoint a person qualified in accordance with chapter 542B and provide the surveyor with a suitable book in which to record field notes and plats.

3. Except as otherwise provided by state law, a person appointed as provided in subsection 1 may be removed by the board by written order. The order shall give the reasons and be filed in the office of the auditor, and a copy shall be sent by certified mail to the person removed who, upon request filed with the auditor within thirty days of the date of mailing the copy, shall be granted a public hearing before the board on all issues connected with the removal. The hearing shall be held within thirty days of the date the request is filed unless the person removed requests a later date.

4. A board or commission appointed by the board of supervisors shall notify the county auditor of the name and address of its clerk or secretary.

5. A supervisor serving on another county board or commission shall be paid only as a supervisor for a day which includes official service on both boards.

2001 Acts, ch 95, §1; 2001 Acts, 2nd Ex, ch 4, §8, 9

2001 amendment to subsection 1, paragraph f, is effective November 16, 2001; 2001 Acts, 2nd Ex, ch 4, §9

Subsection 1, paragraph f amended

Subsection 3 amended

331.342 Conflicts of interest in public contracts.

As used in this section, "contract" means a claim, account, or demand against or agreement with a county, express or implied, other than a contract to serve as an officer or employee of the county. However, contracts subject to section 314.2 are not subject to this section.

An officer or employee of a county shall not have an interest, direct or indirect, in a contract with that county. A contract entered into in violation of this section is void. The provisions of this section do not apply to:

1. The designation of a bank or trust company as a depository, paying agent, or for investment of funds.

2. An employee of a bank or trust company, who serves as treasurer of a county.

3. Contracts made by a county upon competitive bid in writing, publicly invited and opened.

4. Contracts in which a county officer or employee has an interest solely by reason of employment, or a stock interest of the kind described in subsection 8, or both, if the contracts are made by competitive bid, publicly invited and opened, and if the remuneration of employment will not be directly affected as a result of the contract and the duties of employment do not directly involve the procurement or preparation of any part of the contract. The competitive bid qualification of this subsection does not apply to a contract for professional services not customarily awarded by competitive bid.

5. The designation of official newspapers.

6. A contract in which a county officer or employee has an interest if the contract was made before the time the officer or employee was elected or appointed, but the contract shall not be renewed.

7. A contract with volunteer fire fighters or civil defense volunteers.

8. A contract with a corporation in which a county officer or employee has an interest by reason of stockholdings when less than five percent of the outstanding stock of the corporation is owned or controlled directly or indirectly by the officer or employee or the spouse or immediate family of the officer or employee.

9. A contract made by competitive bid, publicly invited and opened, in which a member of a county board, commission, or administrative agency has an interest, if the member is not authorized by law to participate in the awarding of the contract. The competitive bid qualification of this subsection does not apply to a contract for professional services not customarily awarded by competitive bid.

10. Contracts not otherwise permitted by this section, for the purchase of goods or services by a county, which benefit a county officer or employee,

if the purchases benefiting that officer or employee do not exceed a cumulative total purchase price of one thousand five hundred dollars in a fiscal year.

Section not amended; internal reference change applied

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. Authorize the auditor to issue checks in lieu of warrants. The checks shall be charged directly against a bank account controlled by the county treasurer.

f. Impose a hotel and motel tax in accordance with chapter 422A.

g. Order the suspension of property taxes or cancel and remit the taxes of certain persons as provided in sections 427.8 and 427.10.

h. Provide for a partial exemption from property taxation in accordance with chapter 427B.

i. 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 gov-

erned 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.

2001 Acts, ch 45, §2
Section 2, NEW paragraph e and former paragraphs e - h redesignated as f - i

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) The costs of inpatient or outpatient substance abuse admission, commitment, transportation, care, and treatment at any of the following:

(a) 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.

(b) A state mental health institute, or a community-based public or private facility or service.

(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 university of Iowa hospitals and clinics' center for disabilities and development for children with severe disabilities 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 232.71C.

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.

2001 Acts, ch 181, §25

Subsection 1, paragraph a, subparagraph (3) 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. The county may pay for the services in cooperation with other counties by pooling appropriations from the fund with other counties or through county regional entities including but not limited to the county’s mental health and developmental disabilities regional planning council created pursuant to section 225C.18.

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. 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 as defined in section 331.438, less the amount of property tax relief to be received pursuant to section 426B.2, 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. A levy certified under this section is not subject to the appeal provisions of sections 331.426 and 444.25B or to any other provision in law authorizing a county to exceed, increase, or appeal a property tax levy limit.

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.

2001 Acts, ch 155, §1, 9 – 11

Reimbursement rate increase for purchase of service providers for fiscal years beginning July 1, 2000, and July 1, 2001; 2000 Acts, ch 1221, §3; 2001 Acts, ch 184, §2, 4, 15; 2001 Acts, ch 191, §34, 53

2001 amendments striking subsection 6 and repeal of related transition provisions take effect May 21, 2001, and apply retroactively to April 13, 2000; 2001 Acts, ch 155, §11

Subsection 6 stricken

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, section 331.554, subsection 6, sections 341A.20, 364.3, 368.21, 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.

2001 Acts, ch 155, §2, 9 – 11

2001 amendment striking subsection 2, paragraph n, and repeal of related transition provisions take effect May 21, 2001, and apply retroactively to April 13, 2000; 2001 Acts, ch 155, §11

Subsection 2, paragraph n stricken

331.429 Secondary road fund.

1. Except as otherwise provided by state law, county revenues for secondary road services shall be credited to the secondary road fund, including the following:

a. Transfers from the general fund not to exceed in any year the dollar equivalent of a tax of sixteen and seven-eighths cents per thousand dollars of assessed value on all taxable property in the county multiplied by the ratio of current taxes actually collected and apportioned for the general basic levy to the total general basic levy for the current year, and an amount equivalent to the moneys derived by the general fund from military service tax credits under chapter 426A, manufactured or mobile home taxes under section 435.22, and delinquent taxes for prior years collected and apportioned to the general basic fund in the current year, multiplied by the ratio of sixteen and seven-eighths cents to three dollars and fifty cents.

b. Transfers from the rural services fund not to exceed in any year the dollar equivalent of a tax of three dollars and three-eighths cents per thousand dollars of assessed value on all taxable property not located within the corporate limits of a city in the county multiplied by the ratio of current taxes actually collected and apportioned for the rural services basic levy to the total rural services basic levy for the current year and an amount equivalent to the moneys derived by the rural services fund from military service tax credits under

chapter 426A, manufactured or mobile home taxes under section 435.22, and delinquent taxes for prior years collected and apportioned to the rural services basic fund in the current year, multiplied by the ratio of three dollars and three-eighths cents to three dollars and ninety-five cents.

c. Moneys allotted to the county from the state road use tax fund.

d. Moneys provided by individuals from their own contributions for the improvement of any secondary road.

e. Other moneys dedicated to this fund by law including but not limited to sections 306.15, 309.52, 311.23, 311.29, and 313.28.

2. The board may make appropriations from the secondary road fund for the following secondary road services:

a. Construction and reconstruction of secondary roads and costs incident to the construction and reconstruction.

b. Maintenance and repair of secondary roads and costs incident to the maintenance and repair.

c. Payment of all or part of the cost of construction and maintenance of bridges in cities having a population of eight thousand or less and all or part of the cost of construction of roads which are located within cities of less than four hundred population and which lead to state parks.

d. Special drainage assessments levied on account of benefits to secondary roads.

e. Payment of interest and principal on bonds of the county issued for secondary roads, bridges, or culverts constructed by the county.

f. A legal obligation in connection with secondary roads and bridges, which obligation is required by law to be taken over and assumed by the county.

g. Secondary road equipment, materials, and supplies, and garages or sheds for their storage, repair, and servicing.

h. Assignment or designation of names or numbers to roads in the county and erection, construction, or maintenance of guideposts or signs at intersections of roads in the county.

i. The services provided under sections 306.15, 309.18, 309.52, 311.7, 311.23, 313A.23, 316.14, 468.43, 468.108, 468.341, and 468.342, or other state law relating to secondary roads.

2001 Acts, ch 153, §15; 2001 Acts, ch 176, §80

Terminology change applied

331.438 County mental health, mental retardation, and developmental disabilities services expenditures — management committee.

1. For the purposes of section 331.424A, this section, section 331.439, and chapter 426B, unless the context otherwise requires:

a. “*Base year expenditures*” means the amount selected by a county and reported to the county finance committee pursuant to this paragraph. The amount selected shall be equal to the amount of

net expenditures made by the county for qualified mental health, mental retardation, and developmental disabilities services provided in one of the following:

(1) The actual amount reported to the state on October 15, 1994, for the fiscal year beginning July 1, 1993.

(2) The net expenditure amount contained in the county's final budget certified in accordance with chapter 24 for the fiscal year beginning July 1, 1995, and reported to the county finance committee.

b. "*Per capita expenditure*" means the amount derived from the sum of a county's expenditures for mental health, mental retardation, and developmental disabilities services for a fiscal year as reported to the department of human services pursuant to section 331.439, plus the state payment to the county and any payments made under section 426B.5 for that fiscal year, divided by the county's general population for that fiscal year.

c. "*Qualified mental health, mental retardation, and developmental disabilities services*" means the services specified on forms issued by the county finance committee following consultation with the state-county management committee.

d. "*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. a. A state payment to a county for a fiscal year shall consist of the sum of the state funding the county is eligible to receive from the property tax relief fund in accordance with section 426B.2 plus the county's portion of state funds appropriated for the allowed growth factor adjustment established by the general assembly under section 331.439, subsection 3.

b. A county's portion of the allowed growth factor adjustment appropriation for a fiscal year shall be determined based upon the county's proportion of the state's general population.

c. The department of human services shall provide for payment of the amount due a county for the county's allowed growth factor adjustment determined in accordance with this subsection. The director of human services shall authorize warrants payable to the county treasurer for the amounts due and the warrants shall be mailed in January of each year. The county treasurer shall credit the amount of the warrant to the county's services fund created under section 331.424A.

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 fifteen voting members as follows:

(1) Four members shall be appointed by the director of human services. Four members shall be appointed by the Iowa state association of counties. 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. In addition, two members shall be appointed by the community services affiliate of the Iowa state association of counties.

(2) The committee shall include two members nominated by service providers, one member nominated by service advocates, one member who is a service consumer, and one member nominated by the state's council of the association of federal, state, county, and municipal employees, with these 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 elect officers, adopt operating procedures, and meet as deemed necessary by the committee. Terms of office for the appointed voting members of the committee are three years and shall be staggered. A vacancy on the committee shall be filled in the same manner as the original appointment.

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 recordkeeping 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. The recommendations developed for the state and county regarding managed care shall include but are not limited to standards for limiting excess costs and profits, and for restricting cost shifting under a managed care system.

(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.

(15) Make recommendations to the mental health and developmental disabilities commission for administrative rules providing statewide standards and a monitoring methodology to determine whether cost-effective individualized services are available as required pursuant to section 331.439, subsection 1, paragraph "b".

(16) Make recommendations to the mental health and developmental disabilities commission

for administrative rules establishing statewide minimum standards for services and other support required to be available to persons covered by a county management plan under section 331.439.

(17) Make recommendations to the mental health and developmental disabilities commission and counties for measuring and improving the quality of state and county mental health, mental retardation, and developmental disabilities services and other support.

2001 Acts, ch 155, §3, 9 - 11

2001 amendment striking subsection 1, paragraph a, unnumbered paragraph 2, and repeal of related transition provisions take effect May 21, 2001, and apply retroactively to April 13, 2000; 2001 Acts, ch 155, §11

Subsection 1, paragraph a, unnumbered paragraph 2 stricken

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

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.

(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 eligible electors of the county equal in number 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, as part of a municipal housing project under chapter 403 or otherwise, 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 subparagraph 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 electors 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 eligible electors equal in number to 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 members of the armed services 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, ar-

chitectural, 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.

2001 Acts, ch 56, §22, 23
Subsection 2, paragraph b, subparagraph (7) and subparagraph (12), subparagraph subdivision (b) amended

331.461 Definitions.

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

1. "Combined county enterprise" means two or more county enterprises combined and operated as a single enterprise.

2. "County enterprise" means any of the following:

a. Airports and airport systems.

b. Works and facilities useful and necessary for the collection, treatment, purification, and disposal in a sanitary manner of the liquid and solid waste, sewage, and industrial waste of the county, including sanitary disposal projects as defined in section 455B.301 and sanitary sewage systems, and including the acquisition, establishment, construction, purchase, equipment, improvement, extension, operation, maintenance, reconstruction, and repair of the works and facilities within or without the limits of the county, and including works and facilities to be jointly used by the county and other political subdivisions.

c. Swimming pools and golf courses, including their acquisition, establishment, construction, purchase, equipment, improvement, extension, operation, maintenance, reconstruction, and repair.

d. The equipment, enlargement, and improvement of a county public hospital previously established and operating under chapter 347, including acquisition of the necessary lands, rights-of-way, and other property, subject to approval by the board of hospital trustees. However, notice of the proposed bond issue shall be published at least once each week for two consecutive weeks and if, within thirty days following the date of the first publication, a petition requesting an election on the proposal and signed by eligible electors 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. Bonds issued under this paragraph shall mature in not more than thirty years from date of issuance.

e. In a county with a population of less than one hundred fifty thousand, a county hospital es-

tablished under chapter 37 or 347A, including its acquisition, construction, equipment, enlargement, and improvement, and including necessary lands, rights-of-way, and other property. However, bonds issued under this paragraph shall mature in not more than thirty years from date of issuance, and are subject to the notice and election requirements of bonds issued under paragraph “d”.

f. A waterworks or single benefited water district under section 357.35, including land, easements, rights-of-way, fixtures, equipment, accessories, improvements, appurtenances, and other property necessary or useful for the operation of the waterworks or district.

g. Housing for persons who are elderly or persons with physical disabilities.

3. “*Gross revenue*” means all income and receipts derived from the operation of a county enterprise or combined county enterprise.

4. “*Net revenues*” means gross revenues less operating expenses.

5. “*Operating expense*” means salaries, wages, cost of maintenance and operation, materials, supplies, insurance, and all other items normally included under recognized accounting practices, but does not include allowances for depreciation in the value of physical property.

6. “*Pledge order*” means a promise to pay out of the net revenues of a county enterprise or combined county enterprise, which is delivered to the contractors or other persons in payment of all or part of the cost of the project.

7. “*Project*” means the acquisition, construction, reconstruction, extending, remodeling, improving, repairing, and equipping of all or part of a county enterprise or combined county enterprise within or without the boundaries of the county.

8. “*Rates*” means rates, fees, tolls, rentals, and charges for the use of or service provided by a county enterprise or combined county enterprise.

9. “*Revenue bond*” means a negotiable bond issued by a county and payable from the net revenues of a county enterprise or combined county enterprise.

2001 Acts, ch 56, §24

Subsection 2, paragraph d 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 or checks 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 persons with mental illness, 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 moneys 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 re-

demption 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 tax-levying 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.

33. Carry out duties relating to warrant lists provided by the county auditor pursuant to section 331.506, subsection 1.

2001 Acts, ch 45, §3
Subsection 2 amended

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 requirement that the original warrant be preserved is satisfied by preservation of the warrant in electronic form if the requirements of section 554D.113 are met. 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, other than a warrant, outstanding for more than one year shall be canceled, removed from the list of outstanding checks, deposited to the account on which the check was written, and credited as unclaimed fees and trusts. The treasurer shall maintain a list of the checks for one year after cancellation. A person may claim the amount of the canceled treasurer's check for a period of one year after cancellation upon proper proof of ownership by filing a claim with the county auditor.

7. A warrant outstanding for more than one year 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 one year 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.

2001 Acts, ch 45, §4
Subsections 6 and 7 amended

331.559 Duties relating to taxation.

The treasurer shall:

1. Determine and collect taxes on mobile homes as provided in sections 435.22 to 435.26.
2. Collect the tax levied for the county brucellosis and tuberculosis eradication fund as provided in section 165.18.
3. Collect the tax levied for the county agricultural extension education fund and pay it to the extension treasurer as provided in section 176A.12.
4. Collect the costs assessed by the secretary of agriculture relating to the treatment or destruction of agricultural or horticultural plants or products as provided in section 177A.17.
5. Collect the tax levied for the erection and equipping of community college facilities as provided in section 260C.22.
6. Collect the costs assessed against a property owner for the destruction or eradication of weeds as provided in sections 317.20 and 317.21.
7. Levy a tax sufficient to pay any deficiency in the assessments collected to pay the principal and interest on bonds issued by a benefited water district as provided in section 357.22.
8. Collect city taxes certified to the auditor as provided in section 384.2.
9. Send the amounts of each city's tax revenue and special assessments collected on its behalf for direct deposit into the depository and account designated as provided in section 384.11.
10. Accept a partial payment of the annual installment of a special assessment before its due date as provided in section 384.65, subsection 6.
11. Serve as an agent of the director of revenue and finance to collect state taxes as provided in section 422.71, subsection 5.
12. Carry out duties relating to the administration of the homestead tax credit as provided in sections 425.4, 425.5, 425.7, 425.9, 425.10 and 425.25.
13. Carry out duties relating to the administration of the agricultural land tax credit as provided in section 426.8.
14. Carry out duties relating to the administration of the military service tax credit as provided in sections 426A.3, 426A.5, 426A.8 and 426A.9.
15. Maintain a suspended tax list book as provided in section 427.12.
16. Collect taxes levied against the property of telephone and telegraph companies as provided in section 433.10.
17. Collect taxes levied against the property of railway companies as provided in section 434.22.
18. Carry out duties relating to the collection

and expenditure of assessment expense funds as provided in section 441.16.

19. Apportion and collect the costs assessed by the district court against the board of review or any taxing body resulting from an appeal of property assessments as provided in section 441.40.

20. Carry out duties relating to the preparation and correction of the tax list as provided in chapter 443. After ten years from the date of receipt, the county treasurer shall dispose of the tax list delivered to the county treasurer pursuant to chapter 443.

21. Carry out duties relating to the collection of property taxes as provided in chapter 445.

22. Carry out duties relating to the sale of parcels for delinquent taxes as provided in chapter 446.

23. Carry out duties relating to the redemption of parcels sold for delinquent taxes as provided in chapter 447.

24. Carry out duties relating to the issuance of a tax deed or certificate of title for parcels, as defined in section 445.1, sold for delinquent taxes as provided in chapter 448.

25. Correct tax books or records in accordance with an order of apportionment issued as provided in chapter 449.

26. Carry out other duties relating to taxation as provided by state law.

2001 Acts, ch 45, §5
Subsection 20 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. Except as otherwise authorized by the recorder, 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 and, immediately below the two inches of space, the tax statement information required in paragraph "d". The remaining portion of this space shall be reserved for use by the county 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.

d. A certificate of change of title or an instrument conveying an interest in real property, other than a mortgage, a mortgage release, or an assignment, shall contain the statement "Address tax statement:" which shall be filled out with the name of the taxpayer and a complete mailing address. Each instrument conveying an interest in real property shall contain this statement unless otherwise authorized by the county recorder.

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 on the new record a reference to the original record and on the original record a reference to 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 department of workforce development, 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 fur harvester licenses as provided in sections 483A.10, 483A.12, 483A.13, 483A.14, 483A.15, and 483A.22.

11. Collect migratory game bird fees 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. Reserved.

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 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, and carry out duties related to the filing of certain condemnation documents with the office of secretary of state.

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 chapter 554, article 9, part 5.

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. Accept applications for passports.

40. Carry out other duties as provided by law and duties assigned pursuant to section 331.323.

2000 Acts, ch 1149, §168, 187; 2001 Acts, ch 44, §4, 5; 2001 Acts, ch 45,

§6
2000 amendment to subsection 28 takes effect July 1, 2001; 2000 Acts, ch 1149, §187

See Code editor's note to §12.65

Subsection 1, paragraph d amended

Subsections 2, 23, and 28 amended

331.603 General powers.

1. The recorder may administer oaths and take affirmations on matters relating to the business of the office of recorder as provided in section 63A.2.

2. Subject to the requirements of section 331.903, the recorder may appoint and remove deputies, assistants, and clerks.

3. The recorder may reproduce in miniature on a durable medium any instrument to be recorded. When a recorded instrument involves a release or assignment, the separate instrument filed acknowledging the release or assignment shall be reproduced. In lieu of marginal entries, the recorder shall make notations on both the index and the record of the original instrument. When an official record is produced in miniature, a security copy shall be reproduced at the same time and kept outside of the courthouse.

4. The recorder may, in lieu of maintaining separate index books as required by law, prepare and maintain a combined index record or system which shall contain the same data and information as required to be kept in the separate index books.

2001 Acts, ch 44, §6
Subsection 3 amended

331.605A Document management fee.

The recorder shall also collect a fee of one dollar for each recorded transaction for which a fee is paid pursuant to section 331.604 to be used exclusively for the purpose of preserving and maintaining public records. The treasurer, on behalf of the recorder, shall establish and maintain an interest-bearing account into which all moneys collected pursuant to this section shall be deposited. The recorder shall use the moneys deposited in the account to produce and maintain public records that

meet archival standards, and to enhance the technological storage, retrieval, and transmission capabilities related to archival quality records. The recorder may cooperate with other entities, boards, and agencies to establish methods of records management, and participate in other joint ventures which further the purposes of this paragraph.

The fee collected pursuant to this section shall be used to accomplish the following purposes:

1. Preserve and maintain public records.

2. Assist counties in reducing record preservation costs.

3. Encourage and foster maximum access to public records maintained by county recorders at locations throughout the state.

4. Establish plans for anticipated and possible future needs, including the handling and preservation of vital statistics.

2001 Acts, ch 44, §7

Unnumbered paragraph 1 amended

331.606 General filing requirements.

1. In addition to other requirements specified by law, the recorder shall note in the county system the date of filing of each instrument, the number and character of the instrument, and the name of each grantor and grantee named in the instrument. In numbering the instruments, the recorder may start with the number one immediately following the date of annual settlement with the board and continue to number them consecutively until the next annual settlement with the board or the recorder may start with number one on the first working day of the calendar year and continue to number the instruments consecutively until the last working day of the calendar year.

2. The recorder shall also note in the index the exact time of the filing of each instrument.

3. The county recorder may give the county sheriff the records filed under this chapter or chapter 695 of prior Codes* pertaining to the sale and registration of weapons or may dispose of those records if the sheriff does not wish to receive the records.

2001 Acts, ch 44, §8

*Chapter 695 was repealed by 76 Acts, ch 1245 (4), §526
Subsection 2 amended

331.607 Books and records.

The recorder shall keep the following books and records:

1. A record for military discharges as provided in section 331.608.

2. An index of unemployment contribution liens as provided in section 96.14, subsection 3.

3. A record of fees as provided in section 331.902.

4. An index of income tax liens as provided in section 422.26.

5. A drainage plat book, index, and record book as provided in sections 468.624 and 468.625.

6. A register of the names and descriptions of

farms as provided in section 557.22.

7. Index and records for instruments affecting real estate as provided under chapter 558.

8. An index and record of homesteads as provided in section 561.4.

9. A claimant's index and record for the notices of title interests in land as provided in section 614.35.

10. A book of copies of original entries which has been compared with the originals and certified as true copies of land records by the register of the United States land office as provided in section 622.44.

11. Other indexes and records as provided by law.

2001 Acts, ch 44, §9
Subsections 1, 7–9, and 11 amended

331.608 Military personnel records.

1. The recorder shall maintain a record in which, upon request, the discharge of a veteran shall be recorded without charge.

2. If an official discharge was not issued or if the veteran was killed in action or died in service, the recorder shall record an official certificate, general or special order, letter, or telegram from a competent authority, including letters from the United States department of defense, the United States veterans administration, or other governmental office, which shows the termination of the veteran's service.

3. The recorder shall record without charge the commissions and warrants of veteran officers and noncommissioned officers, orders citing a veteran for bravery and meritorious action, and citations and bestowals of medals from the state, federal or foreign governments.

4. The recorder shall record without charge the discharge or other records of a deceased veteran which are presented on behalf of the deceased veteran by a veterans organization.

5. The recorder shall keep an alphabetical index referring to the name of the veteran whose discharge paper is recorded.

6. If a certified copy of a public record is required to perfect the claim of a veteran in service or honorably discharged or a claim of a dependent of the veteran, the certified copy shall be furnished by the custodian of the public record without charge.

7. If the recorder periodically publishes notice of the services provided to military persons and veterans under this section, the recorder shall pay the cost of the publication in the same manner as other expenses of the recorder's office.

8. As used in this section, "veteran" means a veteran as defined in section 35.1, who enlisted or was inducted from the county, resided at any time in the county, or is buried in the county.

2001 Acts, ch 44, §10
Subsection 1 amended

331.609 Federal liens.

1. *a.* Notices of liens, certificates, and other notices affecting federal tax liens or other federal liens must be filed or recorded in accordance with this section.

b. Notices of liens upon real property for obligations payable to the United States, and certificates and notices affecting the liens shall be recorded in the office of the recorder of the county in which the real property subject to a federal lien is situated.

c. Notices of federal liens upon tangible or intangible personal property for obligations payable to the United States and certificates and notices affecting the liens shall be filed or recorded as follows:

(1) If the person against whose interest the lien applies is a corporation or a partnership whose principal executive office is in this state, as these entities are defined in the internal revenue laws of the United States, in the office of the secretary of state.

(2) In all other cases, in the office of the recorder of the county where the person against whose interest the lien applies resides at the time of recording of the notice of lien.

2. Certification of notices of liens, certificates, or other notices affecting federal liens by the secretary of the treasury of the United States, or a designee of the secretary, or by any official or entity of the United States responsible for the filing or certification of any other lien, entitles them to be filed or recorded, and no other attestation, certification, or acknowledgment is necessary.

3. *a.* If a notice of federal lien, a refiling or re-recording of a notice of lien, or a notice of revocation of a certificate described in paragraph "b" is presented to the filing officer:

(1) If the filing officer is the secretary of state, the secretary shall cause the notice to be marked, held, and indexed in accordance with section 554.9519, as if the notice were a financing statement as provided in chapter 554, article 9, part 5.

(2) If the filing officer is a recorder, the recorder shall endorse on the notice the recorder's identification and the date and time of receipt and record it alphabetically or enter it in an alphabetical index showing the name and address of the person named in the notice, the date and time of receipt, the title and address of the official or entity certifying the lien, and the total appearing on the notice of lien. The recorder may return the original instrument to the sender or dispose of the instrument if the sender does not wish the instrument returned. A document filed in the recorder's office before July 1, 1990, may be returned to the sender or disposed of if the sender does not wish to have the document returned and if there is an official copy of that document in the recorder's office.

b. If a certificate of release, nonattachment, discharge, or subordination of a lien is presented

to the secretary of state for filing, the secretary shall:

(1) Cause a certificate of release or nonattachment to be marked, held, and indexed as if the certificate were a termination statement within the meaning of the uniform commercial code, except that the notice of lien to which the certificate relates shall not be removed from the files.

(2) Cause a certificate of discharge or subordination to be marked, held, and indexed as if the certificate were a release of collateral within the meaning of the uniform commercial code.

c. If a refiled notice of federal lien referred to in paragraph "a" or any of the certificates or notices referred to in paragraph "b" is presented for recording with a recorder, the recorder shall enter the refiled notice or the certificate with the date of recording in an alphabetical index and make a notation on the original record of a reference to the refiled notice or certificate.

d. Upon request of a person, the filing or recording officer shall issue a certificate showing whether there is on file or recorded, on the date and hour stated, a notice of federal lien or certificate or notice affecting the lien, filed or recorded on or after July 1, 1989, naming a particular person, and if a notice or certificate is on file or recorded, giving the date and hour of filing or recording of each notice or certificate. The fee for a certificate is six dollars. Upon request the filing or recording officer shall furnish a copy of any notice of federal tax lien or notice or certificate affecting a federal tax lien for a fee of five dollars per page.

4. The fee for filing or recording, and indexing each notice of lien or certificate or notice affecting the lien shall be as provided in section 331.604. The officer shall bill the internal revenue service or any other appropriate federal agency on a monthly basis for fees for documents filed or recorded by it.

5. Filing or recording officers with whom notices of federal tax liens, certificates, and notices affecting the liens have been filed or recorded on or before July 1, 1970, shall, after that date, continue to maintain a file labeled "federal tax lien notices filed prior to July 1, 1970" containing notices and certificates filed in numerical order of receipt. If a notice of lien was filed or recorded on or before July 1, 1970, a certificate or notice affecting the lien shall be filed or recorded in the same office.

6. Filing or recording officers with whom notices of federal tax liens, certificates, and notices affecting the liens have been filed or recorded after July 1, 1970, and before July 1, 1989, shall, after July 1, 1989, continue to maintain a file labeled "federal tax lien notices filed after July 1, 1970, and before July 1, 1989" containing notices and certificates filed or recorded in numerical order of receipt. If a notice of lien was filed or recorded on or after July 1, 1970, and before July 1, 1989, a certificate or notice affecting the lien shall be filed or

recorded in the same office.

7. This section may be cited as the "*Uniform Federal Lien Registration Act*".

2000 Acts, ch 1149, §169, 187; 2001 Acts, ch 44, §11
2000 amendment to subsection 3, paragraph a, subparagraph (1) is effective July 1, 2001; 2000 Acts, ch 1149, §187
Subsection 3, paragraph a, subparagraph (1), and paragraph c amended

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 associate juvenile 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. Cooperate with the division of labor ser-

vices of the department of workforce development 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 manufactured or 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 persons with mental illness as provided in sections 229.7 and 229.11.

24. Carry out duties relating to the assessment of reported child abuse cases and the protection of abused children as provided in section 232.71B.

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. Cooperate 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 pen-

alties 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 a serious or 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 a serious or 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 a serious or 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 re-committed after bail by order of a magistrate as provided in section 811.7.

63. Carry out duties relating to the confinement of persons with mental illness 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.

65A. Carry out the duties imposed under sections 915.11 and 915.16.

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.

2001 Acts, ch 153, §15; 2001 Acts, ch 176, §80
Terminology change applied

331.655 Fees — mileage — expenses.

1. The sheriff shall collect the following fees:

a. For serving a notice and returning it, for the first person served, fifteen dollars, and each additional person, fifteen dollars except the fee for serving additional persons in the same household shall be ten dollars for each additional service, or if the service of notice cannot be made or several attempts are necessary, the repayment of all necessary expenses actually incurred by the sheriff while attempting in good faith to serve the notice.

b. For each warrant served, twenty dollars, and the repayment of necessary expenses incurred in executing the warrant, as sworn to by the sheriff, or if service of the warrant cannot be made, the repayment of all necessary expenses actually incurred by the sheriff while attempting in good faith to serve the warrant.

c. For serving and returning a subpoena, for each person served, twenty dollars, and the necessary expenses incurred while serving subpoenas in criminal cases or cases relating to hospitalization of persons with mental illness.

d. For summoning a grand or trial jury, all necessary and actual expenses incurred by the sheriff.

e. For summoning a jury to assess the damages to the owners of lands taken for works of internal improvement, and attending them, one hundred dollars per day, and necessary expenses incurred. This subsection does not allow a sheriff to make separate charges for different assessments which can be made by the same jury and completed in one day of ten hours.

f. For serving an execution, attachment, order for the delivery of personal property, injunction, or any order of court, and returning it, fifteen dollars.

g. For making and executing a certificate or deed for lands sold on execution, or a bill of sale for personal property sold, thirty dollars.

h. For the time necessarily employed in making an inventory of personal property attached or levied upon, ten dollars per hour.

i. For a copy of any paper required by law, made by the sheriff, fifty cents.

j. Mileage at the rate specified in section 70A.9 in all cases required by law, going and returning. Mileage fees do not apply where provision is made for expenses, and both mileage and expenses shall not be allowed for the same services and for the same trip. If the sheriff transports one or more persons by auto to a state institution or any other destination required by law or if one or more legal papers are served on the same trip, the sheriff is entitled to one mileage, the mileage cost of which shall be prorated to the persons transported or papers served. However, in serving original notices

in civil cases and in serving and returning a subpoena, the sheriff shall be allowed mileage in each action where the original notice or subpoena is served, with a minimum mileage of one dollar for each service. The sheriff may refuse to serve any legal processes in civil cases until the fees and estimated mileage for service have been paid.

k. For attending sale of property, fifty dollars.

l. For conveying one or more persons to a state, county, or private institution by order of court or commission, necessary expenses for the sheriff and the person conveyed and fifteen dollars per hour for the time necessarily employed in going to and from the institution, the expenses and hourly rate to be charged and accounted for as fees. If the sheriff needs assistance in taking a person to an institution, the assistance shall be furnished at the expense of the county.

m. For serving a warrant for the seizure of intoxicating liquors, five dollars; for the removal and custody of the liquor, actual expenses; for the destruction of the liquor under the order of the court, five dollars and actual expenses; for posting and leaving notices in these cases, five dollars and actual expenses.

n. For posting a notice or advertisement, five dollars.

o. For delivering prisoners under a change of venue, the fee authorized under section 815.8.

2. The mileage fees allowed by law may be retained by the sheriff as an addition to the sheriff's annual salary. In counties having a population of one hundred thousand or more, the county may

contract with the sheriff for the use of an automobile on a monthly basis in lieu of payment of mileage in the service of criminal processes.

3. The sheriff shall keep an accurate record of the fees collected in the county system, make a quarterly report of the fees collected to the board, and pay the fees belonging to the county into the county treasury as provided in section 331.902.

4. The sheriff shall deposit funds collected and held by the sheriff in an approved depository as provided in chapter 12C.

2001 Acts, ch 92, §1

Subsection 1, paragraphs a - c, e - h, and k - n amended

331.660 Appropriation — Indian settlement officer.

There is appropriated annually from the general fund of the state to the county of Tama the sum of twenty-five thousand dollars to be used by the county only for the payment of the salary and expenses of an additional deputy sheriff for the county. The principal duty of the deputy sheriff is to provide law enforcement on the Sac and Fox Indian settlement in the county of Tama. If possible, the deputy sheriff shall reside on the settlement. Additional funds necessary to pay the salary and expenses of the deputy sheriff shall be paid by the county of Tama. The state shall not be held liable for the performance or nonperformance of law enforcement duties pursuant to this section.

Appropriation reduction for fiscal year beginning July 1, 2001; 2001 Acts, ch 176, §13

Section not amended; footnote added

CHAPTER 335

COUNTY ZONING

335.30 Manufactured and modular homes.

A county shall not adopt or enforce zoning regulations or other ordinances which disallow the plans and specifications of a proposed residential structure solely because the proposed structure is a manufactured home. However, a zoning ordinance or regulation shall require that a manufactured home be located and installed according to the same standards, including but not limited to, a permanent foundation system, set-back, and minimum square footage which would apply to a site-built, single family dwelling on the same lot, and shall require that the home is assessed and taxed as a site-built dwelling. A zoning ordinance or other regulation shall not require a perimeter foundation system for a manufactured home which is incompatible with the structural design of the manufactured home structure. A county shall not require more than one permanent foundation system for a manufactured home. For

purposes of this section, a permanent foundation may be a pier footing foundation system designed and constructed to be compatible with the structure and the conditions of the site. When units are located outside a manufactured home community or mobile home park, requirements may be imposed which ensure visual compatibility of the permanent foundation system with surrounding residential structures. As used in this section, "manufactured home" means a factory-built structure, which is manufactured or constructed under the authority of 42 U.S.C. § 5403 and is to be used as a place for human habitation, but which is not constructed or equipped with a permanent hitch or other device allowing it to be moved other than for the purpose of moving to a permanent site, and which does not have permanently attached to its body or frame any wheels or axles. This section shall not be construed as abrogating a recorded restrictive covenant.

A county shall not adopt or enforce construction,

building, or design ordinances, regulations, requirements, or restrictions which would mandate width standards greater than twenty-four feet, roof pitch, or other design standards for manufactured housing if the housing otherwise complies with 42 U.S.C. § 5403. A county shall not adopt or enforce zoning or subdivision regulations or other ordinances which mandate width standards for a

single modular or manufactured home which is sited upon land otherwise zoned as agricultural land. However, this paragraph shall not prohibit a county from adopting and enforcing zoning regulations related to transportation, water, sewerage, or other land development.

2001 Acts, ch 153, §16
Terminology change applied

CHAPTER 336

LIBRARY DISTRICTS

336.2 Library districts formed.

A library district may be established composed of one or more counties, one or more cities, or any combination of cities and 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 the district at the last general election may petition the board of supervisors of the county, or the city council, for the establishment of the library district. The petition shall clearly designate the area to be included in the district.

The board of supervisors of each county and the city council of each city containing area within the proposed district shall submit the proposition to the registered voters within their respective counties and cities at any general or primary election, provided said election occurs not less than forty days after the filing of the petition.

A library district shall be established if a majority of the electors voting on the proposition and residing in the proposed library district favor its establishment.

The result of the election within cities maintaining a free public library shall be considered separately, and no city shall be included within the 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 library district other areas may be included by mutual agreement of the board of trustees of the library district and the governing body of the area sought to be included.

2001 Acts, ch 158, §26
Section amended

336.3 Gifts.

When a gift for library purposes is accepted by a county or city, its use for the library may be enforced against the board of supervisors or city council by the library board by an action of mandamus or by other proper action.

2001 Acts, ch 158, §27
Section amended

336.4 Library trustees.

In any area in which a library district has been established in accordance with this chapter, a board of library trustees, consisting of five, seven, or nine electors of the library district, shall be appointed by the board of supervisors of any county or city comprising the library district. Membership on the library board shall be apportioned between the rural and city areas of the district in proportion to the population in each of such areas. In the event the library district is composed of two or more counties, two or more cities, or any combination of counties and cities, representation on the library board shall be equitably divided between or among the counties and cities in proportion to the population in each of the counties and cities.

2001 Acts, ch 158, §28
Section amended

336.10 Library fund.

All moneys received and set apart for the maintenance of the library shall be deposited in the treasury of the county or city, as determined by the board of library trustees, and paid out upon warrants drawn by the county or city auditor upon requisition of the board of trustees, signed by its president and secretary.

Provided that where a free public library is maintained jointly by two or more counties or cities or any combination of counties and cities, the library trustees may elect a library treasurer, and it shall be the duty of the city and county treasurers to pay over to the library treasurer any and all library taxes that may be collected by them monthly.

The library treasurer shall be required to furnish a bond conditioned as provided by section 64.2 in an amount as agreed upon by the participating boards of supervisors and city councils and the cost shall be paid by the participating counties and cities.

2001 Acts, ch 158, §29
Section amended

336.11 Annual report.

The board of trustees shall, immediately after the close of each fiscal year, submit to the board of

supervisors, and the city council, as appropriate, a report containing a statement of the condition of the library, the number of books added thereto, the number circulated, the number not returned or lost, the amount of fines collected, and the amount of money expended in the maintenance thereof during such year, together with such further information as it may deem important.

2001 Acts, ch 158, §30
Section amended

336.12 Real estate acquired.

In any county or city in which a free library has been established, the board of library trustees may purchase real estate in the name of the county or city for the location of library buildings and branch libraries, and for the purpose of enlarging the grounds.

2001 Acts, ch 158, §31
Section amended

336.13 Maintenance expense on proportionate basis.

The maintenance of a library established in accordance with this chapter shall be on the basis of each participating unit bearing its share of the total cost in proportion to its population as compared to the total population of the library district. The board of library trustees shall make an estimate of the amount necessary for the maintenance of the library, the sources of direct library revenue, and the amount to be contributed from taxes or other revenues by the participating city or county and hold a hearing on the estimate after notice of the hearing is published as provided in section 331.305 or section 362.3, as appropriate. On or before January 10 of each year, the board of library trustees shall transmit the estimate in dollars to the board of supervisors and to the cities participating in the district. The unincorporated area of each county in the library district shall be considered as a separate supporting unit. Each board of supervisors shall review the estimate and appropriate for library purposes its share in the county rural services fund budget. Each city council shall review the estimate for the city and appropriate for library purposes its share in the city general fund budget. Each participating city or county shall contribute its share from taxation or from other sources available for library purposes on an equitable basis. With approval of a city council, the county treasurer may withhold a reasonable portion of the taxes collected for a city to meet the city's contribution for library purposes and deliver a receipt to the city clerk for the amount withheld.

This section shall not affect the taxing authority provided under section 256.69.

2001 Acts, ch 158, §32
Section amended

336.14 Not applicable to contract service.

The provisions of this chapter pertaining to the establishment of a library district shall not apply

to any area receiving library service from any city library, unless the petition for a library district, in addition to the required signatures of electors, is signed by the governing body of the area receiving library service under contract.

2001 Acts, ch 158, §33
Section amended

336.15 Existing contracts assumed.

Whenever a library district is established in accordance with this chapter, its board of trustees shall assume all the obligations of the existing contracts made by cities, townships, school corporations, or counties to receive library service from free public libraries.

2001 Acts, ch 158, §34
Section amended

336.16 Withdrawal from district — termination.

A city may withdraw from the library district upon a majority vote in favor of withdrawal by the electorate of the city in an election held on a motion by the city council. The election shall be held simultaneously with a general or city election. Notice of a favorable vote to withdraw shall be sent by certified mail to the board of library trustees of the library district and the county or city auditor, as appropriate, prior to January 10, and the withdrawal shall be effective on July 1.

A county may withdraw from the district after a majority of the voters of the unincorporated area of the county voting on the issue favor the withdrawal. The board of supervisors shall call for the election which shall be held at the next general election.

A city or county election shall not be called until a hearing has been held on the proposal to submit a proposition of withdrawal to an election. A hearing may be held only after public notice published as provided in section 362.3 in the case of a city or section 331.305 in the case of a county. A copy of the notice submitted for publication shall be mailed to the library on or before the date of publication. The proposal presented at the hearing must include a plan for continuing adequate library service with or without all participants and the respective allocated costs and levels of service shall be stated. At the hearing, any interested person shall be given a reasonable time to be heard, either for or against the withdrawal or the plan to accompany it.

A library district may be terminated if a majority of the electors of the unincorporated area of the county and the cities included in the library district voting on the issue favor the termination. The election shall be held upon motion of the board of supervisors and simultaneously with a primary, general, or other county election. If the vote favors termination, the termination shall be effective on the succeeding July 1.

An election for withdrawal from or termination of a library district shall not be held more than

once each four years.

2001 Acts, ch 158, §35
 Unnumbered paragraphs 1 and 3 – 5 amended

336.18 Contracts to use city library.

1. A school corporation, township, or library district may contract for the use by its residents of a city library. A contract by a county shall supersede all contracts by townships or school corporations within the county outside of cities.

2. *a.* Contracts shall provide for the amount to be contributed. They may, by mutual consent of the contracting parties, be terminated at any time. They may also be terminated by a majority of the voters represented by either of the contracting parties, voting on a proposition to terminate which shall be submitted by the governing body upon a written petition of eligible electors in a number not less than five percent of those who voted in the area for president of the United States or governor at the last general election.

b. The proposition may be submitted at any election provided by law which covers the area of the unit seeking to terminate the contract. The petition shall be presented to the governing body not less than forty days before the election at which the question is to be submitted.

3. The board of trustees of any township which has entered into a contract shall at the April meet-

ing levy a tax not exceeding six and three-fourths cents per thousand dollars of assessed valuation on all taxable property in the township to create a fund to fulfill its obligation under the contract.

4. *a.* Eligible electors of that part of any county outside of cities in a number of not less than twenty-five percent of those in the area who voted for president of the United States or governor at the last general election may petition the board of supervisors to submit the proposition of requiring the board to provide library service for them and their area by contract as provided by this section.

b. The board of supervisors shall submit the proposition to the voters of the county residing outside of cities at the next election, primary or general, provided that the petition has been filed not less than forty days prior to the date of the election at which the question is to be submitted.

c. If a majority of those voting upon the proposition favors it, the board of supervisors shall within thirty days appoint a board of library trustees from residents of the petitioning area. Vacancies shall be filled by the board.

d. The board of trustees may contract with any library for library use or service for the benefit of the residents and area represented by it.

2001 Acts, ch 56, §25, 26; 2001 Acts, ch 158, §36
 Subsection 1 amended
 Subsection 2, paragraph a amended
 Subsection 4, paragraph a amended

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, 2001, and for subsequent fiscal years, for improvements and maintenance of the hospital shall not exceed two dollars and 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 having a population of two hundred twenty-five thousand or over. 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 build-

ings and additions to the hospital buildings 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 otherwise contained in this section not to exceed twenty-seven cents per thousand dollars of assessed value or not to exceed one dollar and twenty-one and one-half cents per thousand dollars of assessed value for improvements and maintenance of the hospital in counties having a population of two hundred twenty-five thousand or over.

In addition to levies otherwise authorized by this section, the board of supervisors may levy a tax at the rate, not to exceed twenty-seven cents per thousand dollars of assessed value, necessary to raise the amount budgeted by the board of hospital trustees for support of ambulance service as authorized in section 347.14, subsection 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.

2001 Acts, ch 75, §1, 2
 Additional levies; see §347.14(10)
 Unnumbered paragraph 1 amended

347.9 Trustees — appointment — terms of office.

When it has been determined by the voters of a county to establish a county public hospital, the board shall appoint seven trustees chosen from among the resident citizens of the county with reference to their fitness for office, and not more than four of the trustees shall be residents of the city at which the hospital is located. The trustees shall hold office until the following general election, at which time their successors shall be elected, two for a term of two years, two for four years, and three for six years, and they shall determine by lot their respective terms, and thereafter their successors shall be elected for regular terms of six years each. A person or spouse of a person with medical or special staff privileges in the county public hospital or who receives direct or indirect compensation in an amount greater than one thousand five hundred dollars in a calendar year from the county public hospital or direct or indirect compensation in an amount greater than one thousand five hundred dollars in a calendar year

from a person contracting for services with the hospital shall not be eligible to serve as a trustee for that county public hospital. However, this section does not prohibit a licensed health care practitioner from serving as a hospital trustee if the practitioner's sole use of the county hospital is to provide health care service to an individual with mental retardation as defined in section 222.2.

2001 Acts, ch 65, §1
 Section amended

347.15 Pecuniary interest prohibited — exceptions. Repealed by 2001 Acts, ch 65, § 2.

347.23 City hospital changed to county hospital.

Any hospital organized and existing as a city hospital may become a county hospital organized and managed as provided for in this chapter, upon a proposition for such purpose being submitted to and approved by a majority of the electors of both the city in which such hospital is located and of the county under whose management it is proposed that such hospital be placed, at any general or special election called for such purpose. The proposition shall be placed upon the ballot by the board of supervisors when requested by a petition signed by eligible electors of the county equal in number to five percent of the votes cast for president of the United States or governor, as the case may be, at the last general election. The proposition may be submitted at the next general election or at a special election called for that purpose. Upon the approval of the proposition the hospital, its assets and liabilities, will become the property of the county and this chapter will govern its future management. The question shall be submitted in substantially the following form: "Shall the municipal hospital of, Iowa, be transferred to and become the property of, and be managed by the county of, Iowa?"

For the purpose of computing whether or not said proposition is carried, the votes of the residents of the city in which said hospital is located shall be counted both for the purpose of ascertaining whether or not the proposition is carried within the city and also for the purpose of ascertaining whether or not the proposition is carried within the county.

2001 Acts, ch 56, §27
 Unnumbered paragraph 1 amended

347.23A Memorial hospital or county hospital payable from revenue bonds changed to county hospital.

1. A hospital established as a memorial hospital under chapter 37 or a county hospital supported by revenue bonds and organized under chapter 347A may become, in accordance with the provisions of this section, a county hospital organized and managed as provided for in this chapter. If the hospital is established by a city as a memo-

rial hospital, the city must be located in the county which will own and manage the hospital. A proposition for the change must be submitted to and approved by a majority of the electors of the county which will own and manage the hospital as provided for in this chapter. In addition, if the hospital is a memorial hospital organized by a city under chapter 37, the proposition must also be approved by a majority of the electors of that city. The proposition may be submitted to the electors at any general or special election called by the county board of supervisors for this purpose.

2. The proposition shall be placed upon the ballot by the board of supervisors if requested by the hospital’s board of trustees or governing commission and the request is endorsed by a petition for this purpose signed by eligible electors of the county equal in number to five percent of the votes cast for president of the United States or governor, as the case may be, at the last general election. Upon the approval of the proposition the hospital, its assets and liabilities, shall become the property of the county and this chapter shall govern its future management.

a. The question for a memorial hospital established by a city under chapter 37 shall be sub-

mitted in substantially the following form: “Shall the hospital of , Iowa, be transferred to and become the property of, and be managed by the county of , Iowa, under provision of chapter 347 of the Code of Iowa?”

b. The question for a memorial hospital established by a county under chapter 37 or a county hospital supported by revenue bonds and organized under chapter 347A shall be submitted in substantially the following form: “Shall the hospital of , Iowa, organized and governed under chapter of the Code of Iowa be changed to be established and governed under chapter 347 of the Code of Iowa?”

3. For the purpose of computing whether or not the proposition is carried, if the hospital is a memorial hospital established by a city under the provisions of chapter 37, the votes of the residents of that city shall be counted both for the purpose of ascertaining whether or not the proposition is carried within the city and also for the purpose of ascertaining whether or not the proposition is carried within the county.

2001 Acts, ch 56, §28
Subsection 2, unnumbered paragraph 1 amended

CHAPTER 351

DOGS AND OTHER ANIMALS

351.39 Confinement.

If a local board of health receives information that an animal has bitten a person or that a dog or animal is suspected of having rabies, the board shall order the owner to confine such animal in the manner it directs. If the owner fails to confine such animal in the manner directed, the animal shall be apprehended and impounded by such board, and after ten days the board may humanely

destroy the animal. If such animal is returned to its owner, the owner shall pay the cost of impoundment. This section shall not apply if a police service dog or a horse used by a law enforcement agency and acting in the performance of its duties has bitten a person.

2001 Acts, ch 19, §1; 2001 Acts, ch 176, §68
Section amended

CHAPTER 354

PLATTING — DIVISION AND SUBDIVISION OF LAND

354.1 Statement of purpose.

It is the purpose of this chapter to provide for a balance between the review and regulation authority of governmental agencies concerning the division and subdivision of land and the rights of landowners. It is therefore determined to be in the public interest:

1. To provide for accurate, clear, and concise legal descriptions of real estate in order to prevent, wherever possible, land boundary disputes or real estate title problems.
2. To provide for a balance between the land

use rights of individual landowners and the economic, social, and environmental concerns of the public when a city or county is developing or enforcing land use regulations.

3. To provide for statewide, uniform procedures and standards for the platting of land while allowing the widest possible latitude for cities and counties to establish and enforce ordinances regulating the division and use of land, within the scope of, but not limited to, chapters 331, 335, 364, 414, and this chapter. All documents presented for recording pursuant to this chapter shall comply

with section 331.602, subsection 1.

4. To encourage orderly community development and provide for the regulation and control of the extension of public improvements, public services, and utilities, the improvement of land, and the design of subdivisions, consistent with an approved comprehensive plan or other specific community plans, if any.

2001 Acts, ch 44, §12
Subsection 3 amended

354.5 Descriptions and conveyance according to plat of survey or acquisition plat.

1. A conveyance of a parcel shown on a recorded plat of survey shall describe the parcel by using the description provided on the plat of survey or by reference to the plat of survey, which reference shall include all of the following:

- a. The parcel letter or number designation.
- b. The document reference number of the recorded plat of survey.
- c. The lot number or letter and name of the official plat, if the parcel lies within an official plat.
- d. The section, township, and range number and reference to the aliquot part of the section, if the parcel lies outside of an official plat.

2. A conveyance of a parcel shown on a recorded acquisition plat shall describe the parcel by using the description provided on the acquisition instrument or by reference to the acquisition plat, which reference shall include all of the following:

- a. The parcel designation and reference to the project for which the right-of-way was acquired.
- b. The document reference number of the recorded acquisition plat.
- c. The lot number or letter and name of the official plat, if the parcel lies within an official plat.
- d. The section, township, and range number and reference to the aliquot part of the section, if the parcel lies outside of an official plat.

3. A description by reference to the recorded plat of survey, in compliance with subsection 1, is valid.

4. A description by reference to the recorded acquisition plat, in compliance with subsection 2, is valid.

5. A description by reference to a permanent

real estate index number is valid for the purpose of assessment and taxation when a county has established a permanent real estate index number system pursuant to section 441.29.

2001 Acts, ch 44, §13, 14
Subsection 1, paragraph b amended
Subsection 2, paragraph b amended

354.24 Errors on recorded plats.

If an error or omission in the data shown on a recorded plat is detected by subsequent examinations or revealed by retracing the lines shown on the plat, the original surveyor or two surveyors confirming the error through independent surveys shall record an affidavit confirming that the error or omission was made. The affidavit shall describe the nature and extent of the error or omission and also describe the corrections or additions to be made to the plat and note a document reference number of the recorded plat. The recorder shall note on the record of the plat the word “corrected”, and note the document reference number of the recorded affidavit. A copy of the recorded affidavit shall be filed with the auditor and assessor. The affidavit shall raise a presumption from the date of recording that the purported facts stated in the affidavit are true, and after the lapse of three years from the date of recording the presumption shall be conclusive.

2001 Acts, ch 44, §15
Section amended

354.26 Corrections or changes to plats.

A vacation, correction, or replatting as provided for in this chapter shall be recorded and an exact copy shall be filed with the auditor and assessor. If a governing body changes the addresses or street names shown on an official plat, notice of the change shall note the name or other designation of each official plat affected and shall be filed with the recorder, auditor, and assessor. The recorder shall note the vacation, correction, or replatting on the index and record of the official plat or upon an attachment to the official plat for that purpose. The auditor shall make the proper changes on the plats required to be kept by the auditor.

2001 Acts, ch 44, §16
Section amended

CHAPTER 357A

RURAL WATER DISTRICTS

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, non-profit 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 nonprof-

it 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 384.24A, 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 division V of chapter 384 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, sanitary sewer district, or another district, for purposes of managing or administering the works, facilities, or waterways which are useful for the collection, disposal, or treatment of wastewater or sewage and which are located within the jurisdiction of the governmental entity or the district. The board may do what is necessary to carry out the agreement, including but not limited to any of the following:

a. Owning or acquiring by gift, lease, purchase, or grant any interest in real or personal property.

b. Constructing, operating, maintaining, repairing, improving, or equipping any of the works, facilities, or waterways.

c. Financing all or part of the cost of acquiring, constructing, maintaining, repairing, improving, or equipping any works, facilities, or waterways, or refinancing all or part of the cost. The financing or refinancing shall be accomplished in accordance with the terms and procedures set forth in the applicable provisions of sections 384.24A, 384.83 through 384.88, 384.92, and 384.93. References in those sections to a city shall be applicable to a district and references in those sections to a governing body or a city council shall be applicable to the district's board.

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.

2001 Acts, ch 24, §47
Subsection 9 amended

357A.22A Rural fire protection program — liability.

A rural water district or rural water association incorporated under this chapter or chapter 504A shall establish a rural fire protection program which shall include, but is not limited to, providing access to designated soft-hose fill stations, providing annually or more often if necessary updated maps of soft-hose fill stations to all fire departments within the rural water service area, and sponsoring informational meetings for all fire departments and interested parties within the rural water service area for the purpose of reviewing locations of facilities, operational procedures,

communication procedures and facilities, and procedures designed to coordinate efforts to enhance rural fire protection.

A rural water district or rural water association incorporated under this chapter or chapter 504A which provides water service to cities, benefited fire districts, or townships shall not be liable for a claim against the district or association for failure to provide or maintain fire hydrants, facilities, or an adequate supply of water or water pressure for fire protection purposes if the purpose of the hydrants, facilities, or water used is not for fire protection. Not later than July 1, 2006, the legislative council shall provide for a review of the liability exemption or limitation provided for rural water districts or rural water associations under this paragraph and assess its effect on the provision of fire protection in areas served by the rural water districts or rural water associations.

2001 Acts, ch 54, §1
NEW section

CHAPTER 357E

RECREATIONAL LAKE AND WATER QUALITY DISTRICTS

357E.9 Trustees — term and qualification.

At the election, the names of at least three candidates for trustee shall be written in by the voters on blank ballots without formal nomination and the board of supervisors shall appoint three from among the five receiving the highest number of votes as trustees for the district. One trustee shall be appointed to serve for one year, one for two years, and one for three years. The trustees shall give bond in the amount required by the board, the premium of which shall be paid by the district. The trustees must be residents of the district. Vacancies shall be filled by election, but if there are no candidates for a trustee office, the vacancy may

be filled by appointment by the board. The terms of the succeeding trustees are for three years.

If the state owns at least four hundred acres of land contiguous to a lake within the district, the natural resource commission shall appoint two members of the board of trustees in addition to the three members provided in this section. The additional two members must be citizens of the state, not less than eighteen years of age, and property owners within the district. The two additional members have voting and other authority equal to the other members of the board and hold office at the pleasure of the natural resource commission.

2001 Acts, ch 24, §48
Unnumbered paragraph 2 amended

CHAPTER 359

TOWNSHIPS AND TOWNSHIP OFFICERS

359.8 Division — effect.

If the petition is signed by a majority of the registered voters of the township residing without the corporate limits of the city, the board of supervisors shall divide the township into two townships, as petitioned; but, except for election purposes, including the appointment of precinct election officials rendered necessary by the change, the division shall not take effect until the first day of January following the next general election which is not a Sunday or a legal holiday.

2001 Acts, ch 56, §29
Section amended

359.17 Trustees — duties — meetings.

The board of township trustees in each township shall consist of three registered voters of the township. The trustees shall act as fence viewers and shall perform other duties assigned them by law. The board of trustees shall meet not less than two times a year. At least one of the meetings shall be scheduled to meet the requirements of section 359.49.

2001 Acts, ch 56, §30
Section amended

CHAPTER 364

POWERS AND DUTIES OF CITIES

364.2 Vesting of power — franchises.

1. A power of a city is vested in the city council except as otherwise provided by a state law.

2. The enumeration of a specific power of a city does not limit or restrict the general grant of home rule power conferred by the Constitution. A city may exercise its general powers subject only to limitations expressly imposed by a state or city law.

3. An exercise of a city power is not inconsistent with a state law unless it is irreconcilable with the state law.

4. *a.* A city may grant to any person a franchise to erect, maintain, and operate plants and systems for electric light and power, heating, telegraph, cable television, district telegraph and alarm, motor bus, trolley bus, street railway or other public transit, waterworks, or gasworks, within the city for a term of not more than twenty-five years. When considering whether to grant, amend, extend, or renew a franchise, a city shall hold a public hearing on the question. Notice of the time and place of the hearing shall be published as provided in section 362.3. The franchise may be granted, amended, extended, or renewed only by an ordinance, but no exclusive franchise shall be granted, amended, extended, or renewed.

b. Such an ordinance shall not become effective unless approved at an election. The proposal may be submitted by the council on its own motion to the voters at any city election. Upon receipt of a valid petition as defined in section 362.4 requesting that a proposal be submitted to the voters, the council shall submit the proposal at the next regular city election or at a special election called for that purpose before the next regular city election. However, the city council may dispense with such election as to the grant, amendment, extension, or renewal of an electric light and power, heating, or gasworks franchise unless there is a valid petition requesting submission of the proposal to the voters, or the party seeking such franchise, grant, amendment, extension, or renewal requests an election. If a majority of those voting approves the proposal, the city may proceed as proposed. The complete text of the ordinance shall be included on the ballot if paper ballots are used. If an electronic voting system or voting machine is used, the proposal shall be stated on the ballot and the full text of the ordinance posted for the voters pursuant to section 52.25. All absentee voters shall receive the full text of the ordinance.

c. Notice of the election shall be given by publication as prescribed in section 49.53 in a newspaper of general circulation in the city.

d. The person asking for the granting, amend-

ing, extension, or renewal of a franchise shall pay the costs incurred in holding the election, including the costs of the notice. A franchise shall not be finally effective until an acceptance in writing has been filed with the council and payment of the costs has been made.

e. The franchise ordinance may regulate the conditions required and the manner of use of the streets and public grounds of the city, and it may, for the purpose of providing electrical, gas, heating, or water service, confer the power to appropriate and condemn private property upon the person franchised.

f. If a city franchise fee is assessed to customers of a franchise, the fee shall not be assessed to the city as a customer.

g. If a city grants more than one cable television franchise, the material terms and conditions of any additional franchise shall not give undue preference or advantage to the new franchisee. A city shall not grant a new franchise that does not include the same territory as that of the existing franchise. A new franchisee shall be given a reasonable period of time to build the new system throughout the territory.

2001 Acts, ch 82, §1; 2001 Acts, ch 98, §1
Subsection 4, paragraph b amended and NEW paragraph g

364.3 Limitation of powers.

The following are limitations upon the powers of a city:

1. A city council shall exercise a power only by the passage of a motion, a resolution, an amendment, or an ordinance.

2. A city shall not provide a penalty in excess of a five hundred dollar fine or in excess of thirty days imprisonment for the violation of an ordinance. An amount equal to ten percent of all fines collected by cities shall be deposited in the account established in section 602.8108. However, one hundred percent of all fines collected by a city pursuant to section 321.236, subsection 1, shall be retained by the city. The criminal penalty surcharge required by section 911.2 shall be added to a city fine and is not a part of the city's penalty.

3. A city may 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.

4. A city may not levy a tax unless specifically authorized by a state law.

5. A city shall not adopt or enforce any ordinance imposing any registration or licensing system or registration or license fees for owner-occu-

ped manufactured or mobile homes including the lots or lands upon which they are located. A city shall not adopt or enforce any ordinance imposing any registration or licensing system, or registration or license fees, or safety or sanitary standards for rental manufactured or mobile homes unless a similar registration or licensing system, or registration or license fees, or safety or sanitary standards are required for other rental properties intended for human habitation. This subsection does not preclude the investigation and abatement of a nuisance or the enforcement of a tiedown system, or the enforcement of any regulations of the state or local board of health if those regulations apply to other rental properties or to owner-occupied housing intended for human habitation.

6. A city shall not provide a civil penalty in excess of five hundred dollars for the violation of an ordinance which is classified as a municipal infraction or if the infraction is a repeat offense, a civil penalty not to exceed seven hundred fifty dollars for each repeat offense. A municipal infraction is not punishable by imprisonment.

7. A city which operates a cable communications system shall manage the right-of-way on a competitively neutral and nondiscriminatory basis. Additionally, a city-operated cable communications system shall be required to pay the same fees and charges and comply with other requirements as may be imposed by the city by ordinance or by the terms of a franchise granted by the city, or as may otherwise be imposed by the city, upon any other cable provider. This subsection does not prohibit a city from making an equitable apportionment of franchise requirements between or among cable television providers, in order to eliminate duplication. This subsection shall not be construed to prohibit a city-operated cable communications system from making transfers of surplus as otherwise allowed or from making in-kind contributions as otherwise allowed.

8. *a.* A city may adopt and enforce an ordinance requiring the construction of a storm shelter at a manufactured home community or mobile home park which is constructed after July 1, 1999. In lieu of requiring construction of a storm shelter, a city may require a community or park owner to provide a plan for the evacuation of community or park residents to a safe place of shelter in times of

severe weather including tornadoes and high winds if the city determines that a safe place of shelter is available within a reasonable distance of the manufactured home community or mobile home park for use by community or park residents. Each evacuation plan prepared pursuant to this subsection shall be filed with, and approved by, the local emergency management agency. If construction of a storm shelter is required, an ordinance adopted or enforced pursuant to this subsection shall not include any of the following requirements:

(1) That the size of the storm shelter be larger than the equivalent of seven square feet for each manufactured or mobile home space in the manufactured home community or mobile home park.

(2) That the storm shelter include a restroom if the shelter is used exclusively as a storm shelter.

(3) That the storm shelter exceed the construction specifications approved by a licensed professional engineer and presented by the owner of the manufactured home community or mobile home park.

(4) That the shelter be located any closer than one thousand three hundred twenty feet from any manufactured or mobile home in the community. However, this restriction shall not prohibit the adoption or enforcement of an ordinance that requires a minimum of one shelter to be located in a manufactured home community or mobile home park.

b. For the purposes of this subsection:

(1) “*Manufactured home community*” means the same as land-leased community defined in sections 335.30A and 414.28A.

(2) “*Mobile home park*” means a mobile home park as defined in section 562B.7.

(3) “*Storm shelter*” means a single structure or multiple structures designed to provide persons with temporary protection from a storm.

9. A city shall not adopt or enforce any ordinance imposing any limitation on the amount of rent that can be charged for leasing private residential or commercial property. This subsection does not prevent the right of a city to manage and control residential property in which the city has a property interest.

2001 Acts, ch 153, §10
Subsections 5 and 8 amended

CHAPTER 368

CITY DEVELOPMENT

368.11 Petition for involuntary city development action.

A petition for incorporation, discontinuance, or boundary adjustment may be filed with the board by a city council, a county board of supervisors, a

regional planning authority, or five percent of the registered voters of a city or territory involved in the proposal. Notice of the filing, including a copy of the petition, must be served upon the council of each city for which a discontinuance or boundary

adjustment is proposed, the board of supervisors for each county which contains a portion of a city to be discontinued or territory to be incorporated, annexed or severed, the council of a city if an incorporation includes territory within the city's urbanized area, and any regional planning authority for the area involved.

Within ninety days of receipt of a petition, the board shall initiate appropriate proceedings or dismiss the petition. The board may combine for consideration petitions or plans which concern the same territory or city or which provide for a boundary adjustment or incorporation affecting common territory. The combined petitions may be submitted for consideration by a special local committee pursuant to section 368.14A.

The petition must include substantially the following information as applicable:

1. A general statement of the proposal.
2. A map of the territory, city or cities involved.
3. Assessed valuation of platted and unplatted land.
4. Names of property owners.
5. Population density.
6. Description of topography.
7. Plans for disposal of assets and assumption of liabilities.
8. Description of existing municipal services, including but not limited to water supply, sewage disposal, and fire and police protection.
9. Plans for agreements with any existing special service districts.
10. In a case of annexation or incorporation, the petition must state that none of the territory is within a city.
11. In a case of incorporation or consolidation, the petition must state the name of the proposed city.
12. Plans shall include a formal agreement between affected municipal corporations and counties for the maintenance, improvement and traffic control of any shared roads involved in an incorporation or boundary adjustment.
13. In the discretion of a city council, a provi-

sion for a transition for the imposition of city taxes against property within an annexation area. The provision shall not allow a greater exemption from taxation than the tax exemption formula schedule provided under section 427B.3, subsections 1 through 5, and shall be applied in the levy and collection of taxes. The provision may also allow for the partial provision of city services during the time in which the exemption from taxation is in effect.

At least ten days before a petition for involuntary annexation is filed as provided in this section, the petitioner shall make its intention known by sending a letter of intent by certified mail to the council of each city whose urbanized area contains a portion of the territory, the board of supervisors of each county which contains a portion of the territory, the regional planning authority of the territory involved, each affected public utility, and to each property owner listed in the petition. The written notification shall include notice that the petitioners shall hold a public meeting on the petition for involuntary annexation prior to the filing of the petition.

Before a petition for involuntary annexation may be filed, the petitioner shall hold a public meeting on the petition. Notice of the meeting shall be published in an official county newspaper in each county which contains a part of the territory at least five days before the date of the public meeting. The mayor of the city proposing to annex the territory, or that person's designee, shall serve as chairperson of the public meeting. The city clerk of the same city or the city clerk's designee shall record the proceedings of the public meeting. Any person attending the meeting may submit written comments and may be heard on the petition. The minutes of the public meeting and all documents submitted at the public meeting shall be forwarded to the board by the chairperson of the meeting.

2001 Acts, ch 56, §31
Unnumbered paragraph 1 amended

CHAPTER 372

ORGANIZATION OF CITY GOVERNMENT

372.4 Mayor-council form.

A city governed by the mayor-council form has a mayor and five council members elected at large, unless the council representation plan is changed pursuant to section 372.13, subsection 11. The council may, by ordinance, provide for a city manager and prescribe the manager's powers and duties, and as long as the council contains an odd number of council members, may change the number of wards, abolish wards, or increase the num-

ber of council members at large without changing the form.

However, a city governed, on July 1, 1975, by the mayor-council form composed of a mayor and a council consisting of two council members elected at large, and one council member from each of four wards, or a special charter city governed, on July 1, 1975, by the mayor-council form composed of a mayor and a council consisting of two council members elected at large and one council member

elected from each of eight wards, may continue until the form of government is changed as provided in section 372.2 or section 372.9. While a city is thus operating with an even number of council members, the mayor may vote to break a tie vote on motions not involving ordinances, resolutions or appointments made by the council alone, and in a special charter city operating with ten council members under this section, the mayor may vote to break a tie vote on all measures.

The mayor shall appoint a council member as mayor pro tem, and shall appoint and dismiss the marshal or chief of police except where an inter-governmental agreement makes other provisions for police protection or as otherwise provided in section 400.13. However, the appointment and dismissal of the marshal or chief of police are subject to the consent of a majority of the council. Oth-

er officers must be selected as directed by the council. The mayor is not a member of the council and shall not vote as a member of the council.

In a city having a population of five thousand or less, the city council may, or shall upon petition of the electorate meeting the numerical requirements of section 372.2, subsection 1, submit a proposal at the next regular or special city election to reduce the number of council members to three. If a majority of the voters voting on the proposal approves it, the proposal is adopted. If the proposal is adopted, the new council shall be elected at the next regular or special city election. The council shall determine by ordinance whether the three council members are elected at large or by ward.

2001 Acts, ch 35, §1
Unnumbered paragraph 3 amended

CHAPTER 380

CITY LEGISLATION

380.11 Certain measures recorded.

Immediately after the effective date of a measure establishing any zoning district, building lines, or fire limits, the city clerk shall certify the measure and a plat showing the district, lines, or limits to the recorder of any county which contains

part of the city. The county recorder shall index and record the measure and plat. The city shall pay the recording fee.

2001 Acts, ch 44, §17
Section amended

CHAPTER 384

CITY FINANCE

384.19 Written protest.

Within a period of ten days after the final date that a budget or amended budget may be certified to the county auditor, persons affected by the budget may file a written protest with the county auditor specifying their objections to the budget or any part of it. A protest must be signed by registered voters equal in number to one-fourth of one percent of the votes cast for governor in the last preceding general election in the city, but the number shall not be less than ten persons and the number need not be more than one hundred persons.

Upon the filing of any such protest, the county auditor shall immediately prepare a true and complete copy of the written protest, together with the budget to which the objections are made, and shall transmit the same forthwith to the state appeal board, and shall also send a copy of the protest to the council.

The state appeal board shall proceed to consider the protest in accordance with the same provisions that protests to budgets of municipalities are considered under chapter 24. The state appeal board

shall certify its decision with respect to the protest to the county auditor and to the parties to the appeal as provided by rule, and the decision shall be final.

The county auditor shall make up the records in accordance with the decision and the levying board shall make its levy in accordance with the decision. Upon receipt of the decision the council shall correct its records accordingly, if necessary.

2001 Acts, ch 56, §32
Unnumbered paragraph 1 amended

384.24 Definitions.

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

1. "*General obligation bond*" means a negotiable bond issued by a city and payable from the levy of unlimited ad valorem taxes on all the taxable property within the city through its debt service fund which is required to be established by section 384.4.

2. "*City enterprise*" means any of the following, including the real estate, fixtures, equipment, ac-

cessories, appurtenances, and all property necessary or useful for the operation of any of the following:

a. Parking facilities systems, which may include parking lots and other off-street parking areas, parking ramps and structures on, above, or below the surface, parking meters, both on-street and off-street, and all other fixtures, equipment, accessories, appurtenances, and requisites useful for the successful operation of a parking facilities system.

b. Civic centers or civic center systems, which may include auditoriums, music halls, theatres, sports arenas, armories, exhibit halls, meeting rooms, convention halls, or combinations of these.

c. Recreational facilities or recreational facilities systems, including, without limitation, real and personal property, water, buildings, improvements, and equipment useful and suitable for administering recreation programs, and also including without limitation, zoos, museums, and centers for art, drama, and music, as well as those programs more customarily identified with the term "recreation" such as public sports, games, pastimes, diversions, and amusement, on land or water, whether or not such facilities are located in or as a part of any public park.

d. Port facilities or port facilities systems, including without limitation, real and personal property, water, buildings, improvements and equipment useful and suitable for taking care of the needs of commerce and shipping, and also including without limitation, wharves, docks, basins, piers, quay walls, warehouses, tunnels, belt railway facilities, cranes, dock apparatus, and other machinery necessary for the convenient and economical accommodation and handling of watercraft of all kinds and of freight and passengers.

e. Airport and airport systems.

f. Solid waste collection systems and disposal systems.

g. Bridge and bridge systems.

h. Hospital and hospital systems.

i. Transit systems.

j. Stadiums.

k. Housing for persons who are elderly or persons with physical disabilities.

l. Child care centers providing child care or preschool services, or both. For purposes of this paragraph, "child care" means providing for the care, supervision, and guidance of a child by a person other than the parent, guardian, relative, or custodian for periods of less than twenty-four hours per day on a regular basis. For purposes of this paragraph, "preschool" means child care which provides to children ages three through five, for periods of time not exceeding three hours per day, programs designed to help the children to develop intellectual skills, and motor skills, and to extend their interest and understanding of the

world about them.

3. "Essential corporate purpose" means:

a. The opening, widening, extending, grading, and draining of the right-of-way of streets, highways, avenues, alleys, public grounds, and market places, and the removal and replacement of dead or diseased trees thereon; the construction, reconstruction, and repairing of any street improvements; the acquisition, installation, and repair of traffic control devices; and the acquisition of real estate needed for any of the foregoing purposes.

b. The acquisition, construction, improvement, and installation of street lighting fixtures, connections, and facilities.

c. The construction, reconstruction, and repair of sidewalks and pedestrian underpasses and overpasses, and the acquisition of real estate needed for such purposes.

d. The acquisition, construction, reconstruction, extension, improvement, and equipping of works and facilities useful for the collection, treatment, and disposal of sewage and industrial waste in a sanitary manner, for the collection and disposal of solid waste, and for the collection and disposal of surface waters and streams.

e. The acquisition, construction, reconstruction, enlargement, improvement, and repair of bridges, culverts, retaining walls, viaducts, underpasses, grade crossing separations, and approaches thereto.

f. The settlement, adjustment, renewing, or extension of any part or all of the legal indebtedness of a city, whether evidenced by bonds, warrants, or judgments, or the funding or refunding of the same, whether or not such indebtedness was created for a purpose for which general obligation bonds might have been issued in the original instance.

g. The undertaking of any project jointly or in co-operation with any other governmental body which, if undertaken by the city alone, would be for an essential corporate purpose, including the joint purchase, acquisition, construction, ownership, or control of any real or personal property.

h. The acquisition, construction, reconstruction, improvement, and extension of works and facilities useful for the control and elimination of any and all sources of air, water, and noise pollution, and the acquisition of real estate needed for such purposes.

i. The acquisition, construction, reconstruction, and improvement of all waterways, and real and personal property, useful for the protection or reclamation of property situated within the corporate limits of cities from floods or high waters, and for the protection of property in cities from the effects of flood waters, including the deepening, widening, alteration, change, diversion, or other improvement of watercourses, within or without the city limits, the construction of levees, embank-

ments, structures, impounding reservoirs, or conduits, and the establishment, improvement, and widening of streets, avenues, boulevards, and alleys across and adjacent to the project, as well as the development and beautification of the banks and other areas adjacent to flood control improvements.

j. The equipping of fire, police, sanitation, street, and civil defense departments and the acquiring, developing, and improving of a geographic computer data base system suitable for automated mapping and facilities management.

k. The acquisition and improvement of real estate for cemeteries, and the construction, reconstruction, and repair of receiving vaults, mausoleums, and other cemetery facilities.

l. The acquisition of ambulances and ambulance equipment.

m. The reconstruction and improvement of dams already owned.

n. The reconstruction, extension, and improvement of an airport owned or operated by the city, an agency of the city, or a multimember governmental body of which the city is a participating member.

o. The rehabilitation and improvement of parks already owned, including the removal, replacement and planting of trees in the parks, and facilities, equipment, and improvements commonly found in city parks.

p. The rehabilitation and improvement of area television translator systems already owned.

q. The aiding in the planning, undertaking, and carrying out of urban renewal projects under the authority of chapter 403, and all of the purposes set out in section 403.12. However, bonds issued for this purpose are subject to the right of petition for an election as provided in section 384.26, without limitation on the amount of the bond issue or the size of the city, and the council shall include notice of the right of petition in the notice required under section 384.25, subsection 2.

r. The acquisition, construction, reconstruction, improvement, repair, and equipping of waterworks, water mains, and extensions, and real and personal property, useful for providing potable water to residents of a city.

s. The provision of insurance, or funding a self-insurance program or local government risk pool, including but not limited to the investigation and defense of claims, the establishment of reserve funds for claims, the payment of claims, and the administration and management of such self-insurance program or local government risk pool.

t. The acquisition, restoration, or demolition of abandoned, dilapidated, or dangerous buildings, structures or properties or the abatement of a nuisance.

u. The establishment or funding of programs to provide for or assist in providing for the acquisi-

tion, restoration, or demolition of housing, as part of a municipal housing project under chapter 403 or otherwise, or for other purposes as may be authorized under chapter 403A.

4. “*General corporate purpose*” means:

a. The acquisition, construction, reconstruction, extension, improvement, and equipping of city utilities, city enterprises, and public improvements as defined in section 384.37, other than those which are essential corporate purposes.

b. The acquisition, construction, reconstruction, enlargement, improvement, and equipping of community center houses, recreation grounds, recreation buildings, juvenile playgrounds, swimming pools, recreation centers, parks, and golf courses, and the acquisition of real estate therefor.

c. The acquisition, construction, reconstruction, enlargement, improvement, and equipping of city halls, jails, police stations, fire stations, garages, libraries, and hospitals, including buildings to be used for any combination of the foregoing purposes, and the acquisition of real estate therefor.

d. The acquisition, construction, reconstruction, and improvement of dams at the time of acquisition.

e. The removal, replacement, and planting of trees, other than those on public right-of-way.

f. The acquisition, purchase, construction, reconstruction, and improvement of greenhouses, conservatories, and horticultural centers for growing, storing, and displaying trees, shrubs, plants, and flowers.

g. The acquisition, construction, reconstruction, and improvement of airports at the time of establishment.

h. The undertaking of any project jointly or in co-operation with any other governmental body which, if undertaken by the city alone, would be for a general corporate purpose, including the joint purchase, acquisition, construction, ownership, or control of any real or personal property.

i. Any other purpose which is necessary for the operation of the city or the health and welfare of its citizens.

5. The “*cost*” of a project for an essential corporate purpose or general corporate purpose includes construction contracts and the cost of engineering, architectural, technical, and legal services, preliminary reports, property valuations, estimates, plans, specifications, notices, acquisition of real and personal property, consequential damages or costs, easements, rights-of-way, supervision, inspection, testing, publications, printing and sale of bonds, interest during the period or estimated period of construction and for twelve months thereafter or for twelve months after the acquisition date, and provisions for contingencies.

2001 Acts, ch 88, §1, 2
Subsection 2, NEW paragraph 1

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 eligible electors residing within the city equal in number to at least 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.

2001 Acts, ch 56, §33
Subsection 2, unnumbered paragraph 1 amended

CHAPTER 392**ADMINISTRATIVE AGENCIES****392.5 Library board.**

A city library board of trustees functioning on the effective date of the city code shall continue to function in the same manner until altered or discontinued as provided in this section.

In order for the board to function in the same manner, the council shall retain all applicable ordinances, and shall adopt as ordinances all applicable state statutes repealed by 1972 Iowa Acts, chapter 1088.

A library board may accept and control the expenditure of all gifts, devises, and bequests to the library.

A proposal to alter the composition, manner of selection, or charge of a library board, or to replace it with an alternate form of administrative agency, is subject to the approval of the voters of the city.

The proposal may be submitted to the voters at any city election by the council on its own motion. Upon receipt of a valid petition as defined in section 362.4, requesting that a proposal be submitted to the voters, the council shall submit the proposal at the next regular city election. A proposal submitted to the voters must describe with reasonable detail the action proposed.

If a majority of those voting approves the proposal, the city may proceed as proposed.

If a majority of those voting does not approve the proposal, the same or a similar proposal may not be submitted to the voters of the city for at least four years from the date of the election at which the proposal was defeated.

2001 Acts, ch 24, §49
Unnumbered paragraph 2 amended

CHAPTER 400

CIVIL SERVICE

400.8 Original entrance examination — appointments.

1. The commission, when necessary under the rules, including minimum and maximum age limits, which shall be prescribed and published in advance by the commission and posted in the city hall, shall hold examinations for the purpose of determining the qualifications of applicants for positions under civil service, other than promotions, which examinations shall be practical in character and shall relate to matters which will fairly test the mental and physical ability of the applicant to discharge the duties of the position to which the applicant seeks appointment. The physical examination of applicants for appointment to the positions of police officer, police matron, or fire fighter shall be held in accordance with medical protocols established by the board of trustees of the fire and police retirement system established by section 411.5 and shall be conducted in accordance with the directives of the board of trustees. The board of trustees may change the medical protocols at any time the board so determines. The physical examination of an applicant for the position of police officer, police matron, or fire fighter shall be conducted after a conditional offer of employment has been made to the applicant. An applicant shall not be discriminated against on the basis of height, weight, sex, or race in determining physical or mental ability of the applicant. Reasonable rules relating to strength, agility, and general health of applicants shall be prescribed. The costs of the physical examination required under this subsection shall be paid from the trust and agency fund of the city.

2. The commission shall establish the guidelines for conducting the examinations under subsection 1 of this section. It may prepare and administer the examinations or may hire persons with expertise to do so if the commission approves the examinations. It may also hire persons with expertise to consult in the preparation of such examinations if the persons so hired are employed to aid personnel of the commission in assuring that a fair examination is conducted. A fair examination shall explore the competence of the applicant

in the particular field of examination.

3. All appointments to such positions shall be conditional upon a probation period of not to exceed six months, and in the case of police dispatchers and fire fighters a probation period not to exceed twelve months. In the case of police patrol officers, if the employee has successfully completed training at the Iowa law enforcement academy or another training facility certified by the director of the Iowa law enforcement academy before the initial appointment as a police patrol officer, the probationary period shall be for a period of up to nine months and shall commence with the date of initial appointment as a police patrol officer. If the employee has not successfully completed training at the Iowa law enforcement academy or another training facility certified by the director of the law enforcement academy before initial appointment as a police patrol officer, the probationary period shall commence with the date of initial employment as a police patrol officer and shall continue for a period of up to nine months following the date of successful completion of training at the Iowa law enforcement academy or another training facility certified by the director of the Iowa law enforcement academy. A police patrol officer transferring employment from one jurisdiction to another shall be employed subject to a probationary period of up to nine months. However, in cities with a population over one hundred seventy-five thousand, appointments to the position of fire fighter shall be conditional upon a probation period of not to exceed twenty-four months. During the probation period, the appointee may be removed or discharged from such position by the appointing person or body without the right of appeal to the commission. A person removed or discharged during a probationary period shall, at the time of discharge, be given a notice in writing stating the reason or reasons for the dismissal. A copy of such notice shall be promptly filed with the commission. Continuance in the position after the expiration of such probationary period shall constitute a permanent appointment.

2001 Acts, ch 176, §16
Subsection 1 amended

CHAPTER 403

URBAN RENEWAL

403.19 Division of revenue from taxation — tax increment financing.

A municipality may provide by ordinance that

taxes levied on taxable property in an urban renewal area each year by or for the benefit of the state, city, county, school district, or other taxing

district, shall be divided as follows:

1. *a.* Unless otherwise provided in this section, that portion of the taxes which would be produced by the rate at which the tax is levied each year by or for each of the taxing districts upon the total sum of the assessed value of the taxable property in the urban renewal area, as shown on the assessment roll as of January 1 of the calendar year preceding the first calendar year in which the municipality certifies to the county auditor the amount of loans, advances, indebtedness, or bonds payable from the division of property tax revenue, or on the assessment roll last equalized prior to the date of initial adoption of the urban renewal plan if the plan was adopted prior to July 1, 1972, shall be allocated to and when collected be paid into the fund for the respective taxing district as taxes by or for the taxing district into which all other property taxes are paid. However, the municipality may choose to divide that portion of the taxes which would be produced by levying the municipality's portion of the total tax rate levied by or for the municipality upon the total sum of the assessed value of the taxable property in the urban renewal area, as shown on the assessment roll as of January 1 of the calendar year preceding the effective date of the ordinance and if the municipality so chooses, an affected taxing entity may allow a municipality to divide that portion of the taxes which would be produced by levying the affected taxing district's portion of the total tax rate levied by or for the affected taxing entity upon the total sum of the assessed value of the taxable property in the urban renewal area, as shown on the assessment roll as of January 1 of the calendar year preceding the effective date of the ordinance. This choice to divide a portion of the taxes shall not be construed to change the effective date of the division of property tax revenue with respect to an urban renewal plan in existence on July 1, 1994.

b. For the purpose of allocating taxes levied by or for any taxing district which did not include the territory in an urban renewal area on the effective date of the ordinance or initial adoption of the plan, but to which the territory has been annexed or otherwise included after the effective date, the assessment roll applicable to property in the annexed territory as of January 1 of the calendar year preceding the effective date of the ordinance, which amends the plan to include the annexed area, shall be used in determining the assessed valuation of the taxable property in the annexed area.

c. For the purposes of dividing taxes under section 260E.4, the applicable assessment roll for purposes of paragraph "a" shall be the assessment roll as of January 1 of the calendar year preceding the first written agreement providing that all or a portion of program costs are to be paid for by incremental property taxes. The community college shall file a copy of the agreement with the appropriate assessor. The assessor may, within four-

teen days of such filing, physically inspect the applicable taxable business property. If upon such inspection the assessor determines that there has been a change in the value of the property from the value as shown on the assessment roll as of January 1 of the calendar year preceding the filing of the agreement and such change in value is due to new construction, additions or improvements to existing structures, or remodeling of existing structures for which a building permit was required, the assessor shall promptly determine the value of the property as of the inspection in the manner provided in chapter 441 and that value shall be included for purposes of the jobs training project in the assessed value of the employer's taxable business property as shown on the assessment roll as of January 1 of the calendar year preceding the filing of the agreement. The assessor, within thirty days of such filing, shall notify the community college and the employer or business of that valuation which shall be included in the assessed valuation for purposes of this subsection and section 260E.4. The value determined by the assessor shall reflect the change in value due solely to new construction, additions or improvements to existing structures, or remodeling of existing structures for which a building permit was required.

2. That portion of the taxes each year in excess of such amount shall be allocated to and when collected be paid into a special fund of the municipality to pay the principal of and interest on loans, moneys advanced to, or indebtedness, whether funded, refunded, assumed, or otherwise, including bonds issued under the authority of section 403.9, subsection 1, incurred by the municipality to finance or refinance, in whole or in part, an urban renewal project within the area, and to provide assistance for low and moderate income family housing as provided in section 403.22, except that taxes for the regular and voter-approved physical plant and equipment levy of a school district imposed pursuant to section 298.2 and taxes for the payment of bonds and interest of each taxing district must be collected against all taxable property within the taxing district without limitation by the provisions of this subsection. However, all or a portion of the taxes for the physical plant and equipment levy shall be paid by the school district to the municipality if the auditor certifies to the school district by July 1 the amount of such levy that is necessary to pay the principal and interest on bonds issued by the municipality to finance an urban renewal project, which bonds were issued before July 1, 2001. Indebtedness incurred to refund bonds issued prior to July 1, 2001, shall not be included in the certification. Such school district shall pay over the amount certified by November 1 and May 1 of the fiscal year following certification to the school district. Unless and until the total assessed valuation of the taxable property in an urban renewal area exceeds the total as-

essed value of the taxable property in such area as shown by the last equalized assessment roll referred to in subsection 1, all of the taxes levied and collected upon the taxable property in the urban renewal area shall be paid into the funds for the respective taxing districts as taxes by or for the taxing districts in the same manner as all other property taxes. When such loans, advances, indebtedness, and bonds, if any, and interest thereon, have been paid, all moneys thereafter received from taxes upon the taxable property in such urban renewal area shall be paid into the funds for the respective taxing districts in the same manner as taxes on all other property.

3. The portion of taxes mentioned in subsection 2 and the special fund into which they shall be paid, may be irrevocably pledged by a municipality for the payment of the principal and interest on loans, advances, bonds issued under the authority of section 403.9, subsection 1, or indebtedness incurred by a municipality to finance or refinance, in whole or in part, the urban renewal project within the area.

4. As used in this section the word "taxes" includes, but is not limited to, all levies on an ad valorem basis upon land or real property.

5. A municipality shall certify to the county auditor on or before December 1 the amount of loans, advances, indebtedness, or bonds which qualify for payment from the special fund referred to in subsection 2, and the filing of the certificate shall make it a duty of the auditor to provide for the division of taxes in each subsequent year until the amount of the loans, advances, indebtedness, or bonds is paid to the special fund. In any year, the county auditor shall, upon receipt of a certified request from a municipality filed on or before December 1, increase the amount to be allocated under subsection 1 in order to reduce the amount to be allocated in the following fiscal year to the special fund, to the extent that the municipality does not request allocation to the special fund of the full portion of taxes which could be collected. Upon receipt of a certificate from a municipality, the auditor shall mail a copy of the certificate to each af-

fecting taxing district.

6. Tax collections within each taxing district may be allocated to the entire taxing district including the taxes on the valuations determined under subsection 1 and to the special fund created under subsection 2 in the proportion of their taxable valuations determined as provided in this section.

7. For any fiscal year, a municipality may certify to the county auditor for physical plant and equipment revenue necessary for payment of principal and interest on bonds issued prior to July 1, 2001, only if the municipality certified for such revenue for the fiscal year beginning July 1, 2000. A municipality shall not certify to the county auditor for a school district more than the amount the municipality certified for the fiscal year beginning July 1, 2000. If for any fiscal year a municipality fails to certify to the county auditor for a school district by July 1 the amount of physical plant and equipment revenue necessary for payment of principal and interest on such bonds, as provided in subsection 2, the school district is not required to pay over the revenue to the municipality. If a school district and a municipality are unable to agree on the amount of physical plant and equipment revenue certified by the municipality for the fiscal year beginning July 1, 2001, either party may request that the state appeal board review and finally pass upon the amount that may be certified. Such appeals must be presented in writing to the state appeal board no later than July 31 following certification. The burden shall be on the municipality to prove that the physical plant and equipment levy revenue is necessary to pay principal and interest on bonds issued prior to July 1, 2001. A final decision must be issued by the state appeal board no later than the following October 1.

2001 Acts, ch 176, §40, 41, 47

2001 amendments to subsection 2 and adding subsection 7 take effect May 22, 2001, and apply to property taxes due and payable in fiscal years beginning on or after July 1, 2002; 2001 Acts, ch 176, §47

Subsection 2 amended
NEW subsection 7

CHAPTER 404

URBAN REVITALIZATION TAX EXEMPTIONS

404.4 Prior approval of eligibility.

A person may submit a proposal for an improvement project to the governing body of the city or county to receive prior approval for eligibility for a tax exemption on the project. The governing body shall, by resolution, give its prior approval for an improvement project if the project is in conformance with the plan for revitalization developed by the city or county. Such prior approval

shall not entitle the owner to exemption from taxation until the improvements have been completed and found to be qualified real estate; however, if the proposal is not approved, the person may submit an amended proposal for the governing body to approve or reject.

An application shall be filed for each new exemption claimed. The first application for an exemption shall be filed by the owner of the property

with the governing body of the city or county in which the property is located by February 1 of the assessment year for which the exemption is first claimed, but not later than the year in which all improvements included in the project are first assessed for taxation, unless, upon the request of the owner at any time, the governing body of the city or county provides by resolution that the owner may file an application by February 1 of any other assessment year selected by the governing body in which case the exemption is allowed for the number of years remaining in the exemption schedule selected. The application shall contain, but not be limited to, the following information: The nature of the improvement, its cost, the estimated or actual date of completion, the tenants that occupied the owner's building on the date the city or county adopted the resolution referred to in section 404.2, subsection 1, and which exemption in section 404.3 or in the different schedule, if one has been

adopted, will be elected.

The governing body of the city or county shall approve the application, subject to review by the local assessor pursuant to section 404.5, if the project is in conformance with the plan for revitalization developed by the city or county, is located within a designated revitalization area, and if the improvements were made during the time the area was so designated. The governing body of the city or county shall forward for review all approved applications to the appropriate local assessor by March 1 of each year with a statement indicating whether section 404.3, subsection 1, 2, 3 or 4 applies or if a different schedule has been adopted, which exemption from that schedule applies. Applications for exemption for succeeding years on approved projects shall not be required.

2001 Acts, ch 116, §2
Unnumbered paragraph 2 amended

CHAPTER 411

RETIREMENT SYSTEM FOR POLICE OFFICERS AND FIRE FIGHTERS

411.1 Definitions.

The following words and phrases as used in this chapter, unless a different meaning is plainly required by the context, shall have the following meanings:

1. "*Actuarial equivalent*" means a benefit of equal value, when computed upon the basis of mortality tables adopted by the system, and interest computed at the rate established by the actuary.

2. "*Amount earned*" shall mean the amount of money actually earned by a beneficiary in some definite period of time.

3. "*Average final compensation*" means the average earnable compensation of the member during the three years of service the member earned the member's highest salary as a police officer or fire fighter, or if the member has had less than three years of service, then the average earnable compensation of the member's entire period of service.

4. "*Beneficiary*" shall mean any person receiving a retirement allowance or other benefit as provided by this chapter.

5. "*Board of trustees*" means the board created by section 411.36 to direct the establishment and administration of the retirement system.

6. "*Child*" means only surviving issue of a deceased active or retired member, or a child legally adopted by a deceased member prior to the member's retirement. "*Child*" includes only an individual who is under the age of eighteen years, an individual who is under the age of twenty-two years and is a full-time student, or an individual who is

disabled at the time under the definitions used in section 202 of the Social Security Act as amended if the disability occurred to the individual during the time the individual was under the age of eighteen years and the parent of the individual was an active member of the system.

7. "*City*" or "*cities*" means any city or cities participating in the statewide fire and police retirement system as required by this chapter.

8. "*Earnable compensation*" or "*compensation earnable*" shall mean the annual compensation which a member receives for services rendered as a police officer or fire fighter in the course of employment with a participating city. However, the term "*earnable compensation*" or "*compensation earnable*" shall not include amounts received for overtime compensation, meal or travel expenses, uniform allowances, fringe benefits, severance pay, or any amount received upon termination or retirement in payment for accumulated sick leave or vacation. Contributions made by a member from the member's earnable compensation to a plan of deferred compensation shall be included in earnable compensation. Other contributions made to a plan of deferred compensation shall not be included except to the extent provided in rules adopted by the board of trustees pursuant to section 411.5, subsection 3.

9. "*Fire fighter*" or "*fire fighters*" shall mean only the members of a fire department who have passed a regular mental and physical civil service examination for fire fighters and who shall have been duly appointed to such position. Such members shall include fire fighters, probationary fire

fighters, lieutenants, captains, and other senior officers who have been so employed for the duty of fighting fires.

10. “*Medical board*” shall mean the board of physicians provided for in section 411.5.

11. “*Member*” means a member of the retirement system as defined by section 411.3.

12. “*Membership service*” shall mean service as a police officer or a fire fighter rendered for a city which is credited as service pursuant to section 411.4.

13. “*Pension reserve*” means the present value of all payments to be made on account of any pension, or benefit in lieu of a pension, granted under the provisions of this chapter, upon the basis of mortality tables adopted by the system, and interest computed at the rate established by the actuary.

14. “*Pensions*” means annual payments for life derived from appropriations provided by the participating cities and the state and from contributions of the members which are deposited in the fire and police retirement fund. All pensions shall be paid in equal monthly installments.

15. “*Police officer*” or “*police officers*” shall mean only the members of a police department who have passed a regular mental and physical civil service examination for police officers, and who shall have been duly appointed to such positions. Such members shall include patrol officers, probationary patrol officers, matrons, sergeants, lieutenants, captains, detectives, and other senior officers who are so employed for police duty.

16. “*Retirement allowance*” shall mean the pension, or any benefits in lieu thereof, granted to a member upon retirement.

17. “*Retirement system*” or “*system*” means the statewide fire and police retirement system established by this chapter for the fire fighters and police officers of the cities described in section 411.2, its board of trustees, and its appointed representatives.

18. “*Superintendent of public safety*” shall mean any elected city official who has direct jurisdiction over the fire or police department, or the city manager in cities under the city manager form of government.

19. “*Surviving spouse*” shall mean the surviving spouse of a deceased member from active service. Surviving spouse shall include a former spouse only if the division of assets in the dissolution of marriage decree pursuant to section 598.17 grants the former spouse rights of a spouse under this chapter.

For future amendments to subsection 10 effective July 1, 2002, see 2000 Acts, ch 1077, §87, 111; 2001 Acts, ch 176, §17, 18
Section not amended; footnote revised

411.5 Administration.

1. *Board.* The general responsibility for the establishment and proper operation of the retirement system is vested in the board of trustees cre-

ated by section 411.36. The system shall be administered under the direction of the board.

2. *Compensation.* The trustees, other than the secretary, shall serve without compensation, but they shall be reimbursed from the fire and police retirement fund for all necessary expenses which they may incur through service on the board, as provided pursuant to section 411.36.

3. *Rules.* Subject to the limitations of this chapter, the board of trustees shall adopt rules for the establishment and administration of the system and the fire and police retirement fund created by this chapter, and for the transaction of its business.

4. *Organization — employees.* The board of trustees shall elect from its membership a chairperson, and shall, by majority vote of its members, appoint a secretary who may, but need not, be one of its members. The system shall engage such actuarial and other services as are required to transact the business of the retirement system. The compensation of all persons engaged by the system and all other expenses of the board of trustees necessary for the operation of the retirement system shall be paid at such rates and in such amounts as the board of trustees approves.

5. *Data.* The system shall keep in convenient form such data as is necessary for actuarial valuation of the fire and police retirement fund and for checking the experience of the retirement system.

6. *Records — reports.*

a. The board of trustees shall keep a record of all its proceedings, which record shall be open to public inspection. It shall submit an annual report to the governor, the general assembly, and the city council of each participating city concerning the financial condition of the retirement system, its current and future liabilities, and the actuarial valuation of the system. The board of trustees shall submit a certified audit report prepared by a certified public accountant to the auditor of state annually. The system shall comply with the filing fee requirement of section 11.6, subsection 10.

b. The system shall maintain records, including but not limited to names, addresses, ages, and lengths of service, salaries and wages, contributions, designated beneficiaries, benefit amounts, if applicable, and other information pertaining to members as necessary in the administration of this chapter, as well as the names, addresses, and benefit amounts of beneficiaries. For the purpose of obtaining these facts, the system shall have access to the records of the participating cities and the cities shall provide such information upon request. Member and beneficiary records containing personal information are not public records for the purposes of chapter 22. However, summary information concerning the demographics of the members and general statistical information concerning the system is subject to chapter 22, as well as aggregate information by category.

c. Notwithstanding any provision of chapter 22 to the contrary, the system's records may be released to any political subdivision, instrumentality, or agency of the state solely for use in a civil or criminal law enforcement activity pursuant to the requirements of this paragraph. To obtain the records, the political subdivision, instrumentality, or agency of the state shall, in writing, certify to the system that the activity is authorized by law, provide a written description of the information desired, and describe the law enforcement activity for which the information is sought. The system shall not be civilly or criminally liable for the release of records in accordance with the requirements of this paragraph.

7. *Legal advisor.* The system may employ or retain an attorney to serve as the system's legal advisor and to represent the system. The costs of an attorney employed or retained by the system shall be paid from the fire and police retirement fund created in section 411.8.

8. *Medical board.* The system shall designate a medical board to be composed of three physicians who shall arrange for and pass upon all medical examinations required under the provisions of this chapter, except that for examinations required because of disability three physicians from the university of Iowa hospitals and clinics who shall pass upon the medical examinations required for disability retirements, and shall report to the system in writing its conclusions and recommendations upon all matters referred to it. Each report of a medical examination under section 411.6, subsections 3 and 5, shall include the medical board's findings in accordance with section 411.6 as to the extent of the member's physical impairment.

9. *Duties of actuary.* The actuary shall be the technical advisor of the system on matters regarding the operation of the fire and police retirement fund and shall perform such other duties as are required in connection with the operation of the system.

The actuary shall make such investigation of anticipated interest earnings and of the mortality, service, and compensation experience of the members of the system as the actuary recommends, and on the basis of the investigation the system shall adopt such tables and such rates as are required in subsection 11.

10. *Actuarial investigation — tables — rates.* At least once in each five-year period, the actuary shall make an actuarial investigation into the mortality, service, and compensation experience of the members and beneficiaries of the retirement system, and the interest and other earnings on the moneys and other assets of the retirement system, and shall make a valuation of the assets and liabilities of the fire and police retirement fund, and on the basis of the results of the investigation and valuation, the system shall do all of the following:

a. Adopt for the retirement system such interest rate, mortality and other tables as are deemed necessary.

b. Certify the rates of contribution payable by the cities in accordance with section 411.8.

c. Certify the rates of contributions payable by the members in accordance with section 411.8.

11. *Valuation.* On the basis of the rate of interest and tables adopted, the actuary shall make an annual valuation of the assets and liabilities of the fire and police retirement fund created by this chapter.

12. *Requirements related to the Internal Revenue Code.*

a. As used in this subsection, unless the context otherwise requires, "Internal Revenue Code" means the federal Internal Revenue Code as defined in section 422.3.

b. The fund established in section 411.8 shall be held in trust for the benefit of the members of the system and the members' beneficiaries. No part of the corpus or income of the fund shall be used for, or diverted to, purposes other than for the exclusive benefit of the members or the members' beneficiaries or for expenses incurred in the operation of the fund. A person shall not have any interest in, or right to, any part of the corpus or income of the fund except as otherwise expressly provided.

c. Notwithstanding any provision of this chapter to the contrary, in the event of a complete discontinuance of contributions, for reasons other than achieving fully funded status upon an actuarially determined basis, or upon termination of the fund established in section 411.8, a member shall be vested, to the extent then funded, in the benefits which the member has accrued at the date of the discontinuance or termination.

d. Benefits payable from the fund established in section 411.8 to members and members' beneficiaries shall not be increased due to forfeitures from other members. Forfeitures shall be used as soon as possible to reduce future contributions by the cities to the fund, except that the rate shall not be less than the minimum rate established in section 411.8.

e. Notwithstanding any provision of this chapter to the contrary, a member's service retirement allowance shall commence on or before the later of the following:

(1) April 1 of the calendar year following the calendar year in which the member attains the age of seventy and one-half years.

(2) April 1 of the calendar year following the calendar year in which the member retires.

f. The maximum annual benefit payable to a member by the system shall be subject to the limitations set forth in section 415 of the federal Internal Revenue Code, and any regulations promulgated pursuant to that section.

g. The annual compensation of a member taken in account for any purpose under this chapter

shall not exceed the applicable amount set forth in section 401(a)(17) of the federal Internal Revenue Code, and any regulations promulgated pursuant to that section.

13. *Voluntary benefit programs.* The board of trustees shall be responsible for the administration of the voluntary benefit programs established under section 411.40. The board may take any necessary action, including the adoption of rules, for purposes of administering the programs.

For future amendments to subsection 8, effective July 1, 2002, see 2000 Acts, ch 1077, §94, 111; 2001 Acts, ch 176, §17, 18
Section not amended; footnote revised

411.7 Management of fund.

1. The board of trustees is the trustee of the fire and police retirement fund created in section 411.8 and shall annually establish an investment policy to govern the investment and reinvestment of the moneys in the fund, subject to the terms, conditions, limitations and restrictions imposed by subsection 2. Subject to like terms, conditions, limitations, and restrictions the system has full power to hold, purchase, sell, assign, transfer, or dispose of any of the securities and investments in which the fund has been invested, as well as of the proceeds of the investments and any moneys belonging to the fund.

2. The secretary of the board of trustees shall invest, in accordance with the investment policy established by the board of trustees, the portion of the fund established in section 411.8 which in the judgment of the board is not needed for current payment of benefits under this chapter in investments authorized in section 97B.7, subsection 2,

paragraph “b”, for moneys in the Iowa public employees’ retirement fund.

3. The secretary of the board of trustees is the custodian of the fire and police retirement fund. All payments from the fund shall be made by the secretary only upon vouchers signed by two persons designated by the board of trustees. The system may select master custodian banks to provide custody of the assets of the retirement system.

4. A member or employee of the board of trustees shall not have any direct interest in the gains or profits of any investment made by the board of trustees, other than as a member of the system. A trustee shall not receive any pay or emolument for the trustee’s services except as secretary. A member or employee of the board of trustees shall not directly or indirectly for the trustee or employee or as an agent in any manner use the assets of the retirement system except to make current and necessary payments as authorized by the board of trustees, nor shall any trustee or employee of the system become an endorser or surety or become in any manner an obligor for moneys loaned by or borrowed from the system.

5. Except as otherwise provided in section 411.36, a member, employee, and the secretary of the board of trustees shall not be personally liable for a loss to the fire and police retirement fund, the loss shall be assessed against the fire and police retirement fund, and moneys are hereby appropriated from the fund in an amount sufficient to cover the losses.

For future amendment to subsection 2 effective July 1, 2002, see 2001 Acts, ch 68, §17, 24
Section not amended; footnote added

CHAPTER 412

MUNICIPAL UTILITY RETIREMENT SYSTEM

412.4 Payments and investments.

The council, board of waterworks trustees, or other board or commission, whichever is authorized by law to manage and operate any such waterworks, or other municipally owned and operated public utility, shall have the right and power to contract with any legal reserve insurance company authorized to conduct its business in the state, or any bank located in Iowa having trust powers for the investment of funds contributed to an annuity or pension system, for the payment of the pensions or annuities provided in such pension or annuity retirement system, and may pay the premiums or make the contribution of such contract out of the fund provided in section 412.2. Funds shall be invested in accordance with the investment policy for the retirement fund, as established by the governing body of the public utility. In establishing the investment policy, the council,

board, or commission shall be governed by the standards set forth in section 97B.7, subsection 2, paragraph “b”. However, permissible investments shall be limited to those investments authorized in section 12B.10, subsection 5, and investments in diversified commingled investment funds holding only publicly traded securities and under the management of an investment advisor registered with the federal securities and exchange commission under the Investment Advisor Act of 1940. Funds contributed to a bank pursuant to such a contract shall be invested in the manner prescribed in section 633.123A or chapter 633, division XX, part 4, subpart C, and may be commingled with and invested as a part of a common or master fund managed for the benefit of more than one public utility.

2001 Acts, ch 102, §4
Section amended

CHAPTER 414
CITY ZONING

414.28 Manufactured home.

A city shall not adopt or enforce zoning regulations or other ordinances which disallow the plans and specifications of a proposed residential structure solely because the proposed structure is a manufactured home. However, a zoning ordinance or regulation shall require that a manufactured home be located and installed according to the same standards, including but not limited to, a permanent foundation system, set-back, and minimum square footage which would apply to a site-built, single family dwelling on the same lot, and shall require that the home is assessed and taxed as a site-built dwelling. A zoning ordinance or other regulation shall not require a perimeter foundation system for a manufactured home which is incompatible with the structural design of the manufactured home structure. A city shall not require more than one permanent foundation system for a manufactured home. For purposes of this section, a permanent foundation may be a pier footing foundation system designed and constructed to be compatible with the structure and the conditions of the site. When units are located outside a manufactured home community or mobile home park, requirements may be imposed

which ensure visual compatibility of the permanent foundation system with surrounding residential structures. As used in this section, “*manufactured home*” means a factory-built structure, which is manufactured or constructed under the authority of 42 U.S.C. § 5403 and is to be used as a place for human habitation, but which is not constructed or equipped with a permanent hitch or other device allowing it to be moved other than for the purpose of moving to a permanent site, and which does not have permanently attached to its body or frame any wheels or axles. This section shall not be construed as abrogating a recorded restrictive covenant.

A city shall not adopt or enforce construction, building, or design ordinances, regulations, requirements, or restrictions which would mandate width standards greater than twenty-four feet, roof pitch, or other design standards for manufactured housing if the housing otherwise complies with 42 U.S.C. § 5403. However, this paragraph shall not prohibit a city from adopting and enforcing zoning regulations related to transportation, water, sewerage, or other land development.

2001 Acts, ch 153, §16
Terminology change applied

CHAPTER 421

DEPARTMENT OF REVENUE AND FINANCE

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 cooperate 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 man-

ner 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 reassess-

ments 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. The director may establish criteria allowing for the use of electronic filing or the use of alternative filing methods of any return, deposit, or document required to be filed for taxes administered by the department. The director may also establish criteria allowing for payment of taxes, penalty, interest, and fees by electronic funds transfer or other alternative methods.

The director shall adopt rules setting forth procedures for use in electronic filing and electronic funds transfer or other alternative methods and standards that provide for acceptance of a signature in a form other than the handwriting of a person. The rules shall also take into consideration any undue hardship electronic filing or electronic funds transfer or other alternative methods create for filers.

16. To call upon a state agency or institution for technical advice and data which may be of value in connection with the work of the department.

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.18A 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, or which the child support recovery unit is otherwise attempting to collect, 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 lia-

bilities 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 cooperate 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, constituting a minimum amount determined by rule of the department of revenue and finance, 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 en-

titlement 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 criteria 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.

22A. To develop, modify, or contract with vendors to create or administer systems or programs which identify nonfilers of returns or nonpayers of taxes administered by the department. Fees for services, reimbursements, costs incurred by the department, or other remuneration may be funded from the amount of tax, penalty, or interest actually collected and shall be paid only after the amount is collected. An amount is appropriated from the amount of tax, penalty, and interest actually collected, not to exceed the amount collected, which is sufficient to pay for services, reimbursement, costs incurred by the department, or other remuneration pursuant to this subsection. Vendors entering into a contract with the department pursuant to this subsection are subject to the requirements and penalties of the confidentiality laws of this state regarding tax information. The director shall report annually to the legislative fiscal bureau and the chairpersons and ranking members of the ways and means committees on the amount of costs incurred and paid during the previous fiscal year pursuant to this subsection.

22B. Enter into agreements or compacts with remote sellers, retailers, or third-party providers for the voluntary collection of Iowa sales or use taxes attributable to sales into Iowa and to enter into multistate agreements or compacts that provide for the voluntary collection of sales and use taxes. The agreements or compacts shall generally conform to the provisions of Iowa sales and use

tax statutes. All fees for services, reimbursements, remuneration, incentives, and costs incurred by the department associated with these agreements or compacts may be paid or reimbursed from the additional revenue generated. An amount is appropriated from amounts generated to pay or reimburse all costs associated with this subsection. Persons entering into an agreement or compact with the department pursuant to this subsection are subject to the requirements and penalties of the confidentiality laws of this state regarding tax information. Notwithstanding any other provisions of law, the contract, agreement, or compact shall provide for the registration, collection, report, and verification of amounts subject to this subsection.

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, constituting a minimum amount set by rule of the department of revenue and finance, 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 the minimum amount set by rule of the department 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 set-off 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 constituting a minimum amount set by rule of the department. 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, constituting a minimum amount set by rule of the department.

d. Upon submission of a claim the department shall send written notification to the debtor of 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 branch 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 or any other state entity reported in the Iowa comprehensive annual financial report. 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 and any other state agency that maintains a separate accounting system and elects to establish a debt collection setoff procedure for collection of debts owed to the state or its agencies.

(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 constitute a minimum amount set by rule of the department.

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.

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

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 or, if the liability is owing and payable to the clerk of the district court, the department 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 or, if the liability is owing and payable to the clerk of the district court, shall comply with the procedures as provided in paragraph "k".

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.

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

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

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

(3) Upon completion of the setoff, the department shall file, at least monthly, with the clerk of the district court a notice of 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 and no separate written notice is required.

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 may use a participating agency’s statutory collection authority to collect the participating agency’s delinquent accounts, charges, fees, loans, taxes, or other indebtedness owed to or being collected by the state. 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 mem-

bers 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 anticipation of future additional commitments of computer equipment and personnel.

i. The director may distribute to credit reporting entities and 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 administer 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.

2001 Acts, ch 116, §3, 4
Subsections 16 and 22A amended

421.46 Terminal liability health insurance fund.

1. A terminal liability health insurance fund is created in the state treasury under the control of the department of personnel. The proceeds of the terminal liability health insurance fund shall be used by the department of personnel to pay the state's share of the terminal liability of the existing health insurance contract administered by the department of personnel. The moneys appropriated to the terminal liability health insurance fund plus any additional moneys appropriated or collected pursuant to 2001 Acts, chapter 190, or other Acts of the general assembly shall constitute the total amount due to pay the terminal liability specified in this section.

2. The proceeds of the terminal liability health insurance fund shall also be used by the department of revenue and finance to reimburse state agencies for expenditures related to the payment of the health insurance plans surcharge for the terminal liability of the health insurance contract for state employees. The department of revenue and finance shall provide guidelines and forms for documentation that a state agency shall submit for the health insurance reimbursement.

3. Notwithstanding section 8.33, any unencumbered or unobligated balance remaining in the terminal liability health insurance fund at the close of a fiscal year shall not revert.

2001 Acts, ch 190, §20
Partial item veto applied
NEW section

421.47 through 421.59 Reserved.

CHAPTER 421B

CIGARETTE SALES

421B.2 Definitions.

When used in any part of this chapter, the following words, terms and phrases shall have the meaning ascribed to them except where the context clearly indicates a different meaning:

1. "Basic cost of cigarettes" shall mean whichever of the two following amounts is lower: (a) the true invoice cost of cigarettes to the wholesaler or retailer, as the case may be, or (b) the lowest replacement cost of cigarettes to the wholesaler or retailer in the quantity last purchased, less, in either case, all trade discounts and customary discounts for cash, plus one-half of the full face value of any stamps which may be required by any cigarette tax act of this state.

2. "Cigarettes" shall mean and include any roll for smoking, made wholly or in part of tobacco, irrespective of size or shape and whether or not such tobacco is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material

except tobacco.

3. a. "Cost to the retailer" shall mean the basic cost of the cigarettes involved to the retailer plus the cost of doing business by the retailer as defined in this chapter.

b. The cost of doing business by the retailer is presumed to be six percent of the basic cost of cigarettes in the absence of proof of a lesser or higher cost plus the full face value of any stamps which may be required by any cigarette tax act of this state to the extent not already included in the basic cost of cigarettes.

c. If any retailer in connection with the retailer's purchase of any cigarettes shall receive the discounts ordinarily allowed upon purchases by a retailer and in whole or in part discounts ordinarily allowed upon purchases by a wholesaler, the cost of doing business by the retailer with respect to the said cigarettes shall be, in the absence of proof of a lesser or higher cost of doing business, the sum of the cost of doing business by the retailer

and, to the extent that the retailer shall have received the full discounts allowed to a wholesaler, the cost of doing business by a wholesaler as hereinabove defined in subsection 4, paragraph “b.”

4. *a.* “*Cost to wholesaler*” shall mean the basic cost of the cigarettes plus the cost of doing business by the wholesaler, as defined in this chapter.

b. The cost of doing business by the wholesaler is presumed to be three percent of the basic cost of cigarettes in the absence of proof of a lesser or higher cost, which includes cartage to the retail outlet, plus the full face value of any stamps which may be required by any cigarette tax act of this state to the extent not already included in the basic cost of cigarettes.

5. “*Person*” shall mean and include any individual, firm, association, company, partnership, corporation, joint stock company, club agency, syndicate, or anyone engaged in the sale of cigarettes.

6. “*Retailer*” means any person who is engaged in this state in the business of selling, or offering to sell, cigarettes at retail.

For purposes of this chapter, a person who does not meet the definition of retailer or wholesaler but who is engaged in the business of selling cigarettes in this state to a retailer or final consumer

shall be considered a retailer and subject to the minimum pricing requirements of this chapter.

7. “*Sale*” and “*sell*” shall mean and include any transfer for a consideration, exchange, barter, gift, offer for sale and distribution in any manner or by any means whatsoever.

8. “*Sell at retail*”, “*sale at retail*” and “*retail sales*” shall mean and include any sale or offer for sale for consumption or use made in the ordinary course of trade of the seller’s business.

9. “*Sell at wholesale*”, “*sale at wholesale*”, and “*wholesale sales*” shall mean and include any sale or offer for sale made in the course of trade or usual conduct of the wholesaler’s business to a retailer for the purpose of resale.

10. “*Wholesaler*” means and includes any person who acquires cigarettes for the purpose of sale to retailers or to other persons for resale, and who maintains an established place of business when any part of the business is the sale of cigarettes at wholesale to persons licensed under this chapter, and where at all times a stock of cigarettes is available to retailers for resale.

2001 Acts, ch 116, §5

Subsection 6, NEW unnumbered paragraph 2

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. “*Book*”, “*list*”, “*record*”, or “*schedule*” kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2. “*Court*” means the district court in the county of the taxpayer’s residence.

3. “*Department*” means the department of revenue and finance.

4. “*Director*” means the director of revenue and finance.

5. “*Internal Revenue Code*” means the Internal Revenue Code of 1954, prior to the date of its redesignation as the Internal Revenue Code of 1986 by the Tax Reform Act of 1986, or means the Internal Revenue Code of 1986 as amended to and including January 1, 2001, whichever is applicable.

6. The word “*taxpayer*” includes any person, corporation, or fiduciary who is subject to a tax imposed by this chapter.

2001 Acts, ch 127, §3, 9, 10

Internal Revenue Code definition is updated regularly; for applicable definition in a prior tax year, refer to Code for that year

2001 amendment to subsection 5 is effective May 16, 2001, and applies retroactively to tax years beginning on or after January 1, 2000; 2001 Acts, ch 127, §9, 10

Subsection 5 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. Reserved.

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 work opportunity 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. An individual with a disability 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 ter-

minated 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 department of workforce development, 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 department of workforce development, 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 recovered through cost depletion or depreciation, as appropriate under rules prescribed by the director.

15. Add the percentage depletion amount determined with respect to an oil, gas, or geothermal well as described in section 57(a)(1) of the Internal Revenue Code.

16. Subtract the income 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 the net capital gain from the following:

a. (1) 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.

However, where the business is sold to individuals who are all lineal descendants of the taxpayer, the taxpayer does not have to have materially participated in the business in order for the net capital gain from the sale to be excluded from taxation.

However, in lieu of the net capital gain deduction in this paragraph and paragraphs "b", "c", and "d", where the business is sold to individuals who are all lineal descendants of the taxpayer, the amount of capital gain from each capital asset may be subtracted in determining net income.

(2) For purposes of this paragraph, "*lineal descendant*" means children of the taxpayer, including legally adopted children and biological children, stepchildren, grandchildren, great-grandchildren, and any other lineal descendants of the taxpayer.

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.

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. Subtract, to the extent included, active duty pay received by a person in the national guard or armed forces military reserve for service performed on or after November 21, 1995, pursuant to military orders related to peacekeeping in Bosnia-Herzegovina.

26. Add depreciation taken for federal income tax purposes on a speculative shell building defined in section 427.1, subsection 27, 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 27.

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, deductions of all of the following shall be allowed:

a. Contributions made to the account by persons and entities, other than the taxpayer, as authorized in chapter 541A.

b. The amount of any savings refund authorized under section 541A.3, subsection 1.

c. Earnings from the account.

29. 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.

30. 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.

31. 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 six thousand dollars for a person, other than a husband or wife, who files a separate state income tax return and up to a maximum of twelve 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. A husband and wife filing separate state income tax returns or separately on a combined state return are allowed a combined maximum exclusion under this subsection of up to twelve thousand dollars. The twelve thousand dollar exclusion shall be allocated to the husband or wife in the proportion that each spouse's respective pension and retirement pay received bears to total combined pension and retirement pay received.

32. a. Subtract the maximum contribution that may be deducted for Iowa income tax purposes as a participant in the Iowa educational savings plan trust pursuant to section 12D.3, subsection 1, paragraph "a".

b. Add the amount resulting from the cancellation of a participation agreement refunded to the taxpayer as a participant in the Iowa educational savings plan trust to the extent previously deducted as a contribution to the trust.

33. Subtract, to the extent included, income from interest and earnings received from the Iowa educational savings plan trust created in chapter 12D.

34. Subtract, to the extent not deducted for federal income tax purposes, the amount of any gift, grant, or donation made to the Iowa educational savings plan trust for deposit in the endowment fund of that trust.

35. Subtract, to the extent included, the following:

a. Payments made to the taxpayer because of the taxpayer's status as a victim of persecution for racial, ethnic, or religious reasons by Nazi Germany or any other Axis regime or as an heir of such victim.

b. Items of income attributable to, derived from, or in any way related to assets stolen from,

hidden from, or otherwise lost to a victim of persecution for racial, ethnic, or religious reasons by Nazi Germany or any other Axis regime immediately prior to, during, and immediately after World War II, including, but not limited to, interest on the proceeds receivable as insurance under policies issued to a victim of persecution for racial, ethnic, or religious reasons by Nazi Germany or any other Axis regime by European insurance companies immediately prior to and during World War II. However, income from assets acquired with such assets or with the proceeds from the sale of such assets shall not be subtracted. This paragraph shall only apply to a taxpayer who was the first recipient of such assets after recovery of the assets and who is a victim of persecution for racial, ethnic, or religious reasons by Nazi Germany or any other Axis regime or is an heir of such victim.

36. Add, to the extent not already included, income from the sale of obligations of the state and its political subdivisions. Income from the sale of these obligations is exempt from the taxes imposed by this division only if the law authorizing these obligations specifically exempts the income from the sale from the state individual income tax.

37. Notwithstanding the method for computing income from an installment sale under section 453 of the Internal Revenue Code, as defined in section 422.3, the method to be used in computing income from an installment sale shall be the method under section 453 of the Internal Revenue Code, as amended up to and including January 1, 2000. A taxpayer affected by this subsection shall make adjustments in the adjusted gross income pursuant to rules adopted by the director.

2001 Acts, ch 116, §6, 28; 2001 Acts, ch 127, §4, 5, 9, 10
2001 amendments striking former subsection 6 and adding subsection 37 take effect May 16, 2001, and apply retroactively to tax years beginning on or after January 1, 2000; 2001 Acts, ch 127, §9, 10

Subsection 36 takes effect May 3, 2001, and applies retroactively to tax years beginning on or after January 1, 2001; 2001 Acts, ch 116, §28

For future amendments to this section effective on the later of July 1, 2002, or upon the enactment of the interstate compact for adult offender supervision by thirty-five states, see 2001 Acts, ch 15, §1, 2; 2001 Acts, 2nd Ex, ch 6, §21, 22, 25, 26, 37

Subsection 6 stricken
NEW subsections 36 and 37

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 miscel-

laneous 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 239B, 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 239B.

f. Add the amount of the mortgage interest credit allowable for the tax year under section 25 of the Internal Revenue Code to the extent the credit decreased the amount of interest deductible under section 163(g) of the Internal Revenue Code.

g. 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 motor vehicle pursuant to section 321.113, subsection 4, or section 321.113, subsection 5, paragraph “b”, 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 motor vehicle.

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 29.

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 for an individual taxpayer with a casualty or theft property loss or for a net operating loss in a presidentially declared disaster area incurred by a taxpayer engaged in a small business or in the trade or business of farming. For all other Iowa net operating losses, the net operating loss shall be carried back two taxable years or to the taxable year in which the taxpayer 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” or “d” or if not required to be carried back shall be carried forward twenty 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 twenty taxable years.

d. Notwithstanding paragraph “a”, for a taxpayer who is engaged in the trade or business of farming as defined in section 263A(e)(4) of the Internal Revenue Code and has a loss from farming as defined in section 172(b)(1)(F) of the Internal Revenue Code including modifications prescribed by rule by the director, the Iowa loss from the trade or business of farming is a net operating loss which may be carried back five taxable years prior to the taxable year of the loss.

4. Where married persons file separately, both must use the optional standard deduction if either

elects to use it.

5. A taxpayer affected by section 422.8 shall, if the optional standard deduction is not used, be permitted to deduct only such portion of the total referred to in subsection 2 above as is fairly and equitably allocable to Iowa under the rules prescribed by the director.

6. In determining the amount of deduction for federal income tax under subsection 1 or subsection 2, paragraph “b”, for tax years beginning in the 2001 calendar year, the amount of the deduction shall not be adjusted by the amount received during the tax year of the advanced refund of the rate reduction tax credit provided pursuant to the federal Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, and the advanced refund of such credit shall not be subject to taxation under this division.

2001 Acts, ch 132, §22, 24; 2001 Acts, 1st Ex, ch 3, §1, 2
Subsection 2, paragraph g, takes effect January 1, 2002; 2001 Acts, ch 132, §24
Subsection 6 applies retroactively to tax years beginning on or after January 1, 2001, and before January 1, 2002; 2001 Acts, 1st Ex, ch 3, §2
Subsection 2, NEW paragraph g
NEW subsection 6

422.10 Research activities credit.

1. The taxes imposed under this division shall be reduced by a state tax credit for increasing research activities in this state.

a. For individuals, the credit equals the sum of the following:

(1) Six and one-half percent of the excess of qualified research expenses during the tax year over the base amount for the tax year based upon the state’s apportioned share of the qualifying expenditures for increasing research activities.

(2) Six and one-half percent of the basic research payments determined under section 41(e)(1)(A) of the Internal Revenue Code during the tax year based upon 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.

b. In lieu of the credit amount computed in paragraph “a”, subparagraph (1), a taxpayer may elect to compute the credit amount for qualified research expenses incurred in this state in a manner consistent with the alternative incremental credit described in section 41(c)(4) of the Internal Revenue Code. The taxpayer may make this election regardless of the method used for the taxpayer’s federal income tax. The election made under this paragraph is for the tax year and the taxpayer may use another or the same method for any subsequent year.

c. For purposes of the alternate credit computation method in paragraph “b”, the credit per-

centages applicable to qualified research expenses described in clauses (i), (ii), and (iii) of section 41(c)(4)(A) of the Internal Revenue Code are one and sixty-five hundredths percent, two and twenty hundredths percent, and two and seventy-five hundredths percent, respectively.

2. For purposes of this section, an individual may claim a research credit incurred by a partnership, S corporation, limited liability company, 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, S corporation, limited liability company, estate, or trust.

3. For purposes of this section, "base amount", "basic research payment", and "qualified research expense" mean the same as defined for the federal credit for increasing research activities under section 41 of the Internal Revenue Code, except that for the alternative incremental credit such amounts are for research conducted within this state. For purposes of this section, "Internal Revenue Code" means the Internal Revenue Code in effect on January 1, 2001.

4. Any credit in excess of the tax liability imposed by section 422.5 less the credits allowed under sections 422.11A, 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.

2001 Acts, ch 127, §6, 9, 10

2001 amendment to subsection 3 is effective May 16, 2001, and applies retroactively to tax years beginning on or after January 1, 2000; 2001 Acts, ch 127, §9, 10

Subsection 3 amended

422.11C Ethanol blended gasoline tax credit.

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

a. "Ethanol blended gasoline" means the same as defined in section 452A.2.

b. "Gasoline" means gasoline that meets the specifications required by the department of agriculture and land stewardship pursuant to section 214A.2 that is dispensed through a metered pump.

c. "Metered pump" means a motor vehicle fuel pump licensed by the department of agriculture and land stewardship pursuant to chapter 214.

d. "Retail dealer" means a retail dealer as defined in section 214A.1 who operates a metered pump at a service station.

e. "Sell" means to sell on a retail basis.

f. "Service station" means each geographic location in this state where a retail dealer sells and dispenses gasoline on a retail basis.

g. "Tax credit" means the designated ethanol blended gasoline tax credit as provided in this section.

2. The taxes imposed under this division, less the credits allowed under sections 422.12 and 422.12B, shall be reduced by an ethanol blended gasoline tax credit for each tax year that the taxpayer is eligible to claim the tax credit under this section. In order to be eligible, all of the following must apply:

a. The taxpayer is a retail dealer.

b. The taxpayer operates at least one service station at which more than sixty percent of the total gallons of gasoline sold and dispensed through one or more metered pumps by the taxpayer in the tax year is ethanol blended gasoline.

c. The taxpayer complies with requirements of the department required to administer this section.

3. The tax credit shall be calculated separately for each service station site operated by the taxpayer. The amount of the tax credit for each eligible service station is two and one-half cents multiplied by the total number of gallons of ethanol blended gasoline sold and dispensed through all metered pumps located at that service station during the tax year in excess of sixty percent of all gasoline sold and dispensed through metered pumps at that service station during the tax year.

4. Any credit in excess of the taxpayer's tax liability shall be refunded. In lieu of claiming a refund, the taxpayer may elect to have the overpayment shown on the taxpayer's final, completed return credited to the tax liability for the following tax year.

5. An individual may claim the tax credit allowed a partnership, limited liability company, 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, limited liability company, S corporation, estate, or trust.

2001 Acts, ch 123, §2, 6

Ethanol blended gasoline tax credit applies to tax years beginning on or after January 1, 2002; implementation; 2001 Acts, ch 123, §6

NEW section

422.12A Income tax refund checkoff for keep Iowa beautiful fund.

1. A person who files an individual or a joint income tax return with the department of revenue and finance under section 422.13 may designate one dollar or more to be paid to the keep Iowa beautiful fund as created in section 314.28. If the refund due on the return or the payment remitted with the return is insufficient to pay the additional amount designated by the taxpayer to the keep Iowa beautiful fund, the amount designated shall be reduced to the remaining amount of refund or the remaining amount remitted with the return. The designation of a contribution to the keep Iowa beautiful fund under this section is irrevocable.

2. The director of revenue and finance shall draft the income tax form to allow the designation of contributions to the keep Iowa beautiful fund on

the tax return. The department of revenue and finance, on or before January 31, shall certify the total amount designated on the tax return forms due in the preceding calendar year and shall report the amount to the treasurer of state. The treasurer of state shall credit the amount to the keep Iowa beautiful fund. However, before a checkoff pursuant to this section shall be permitted, all liabilities on the books of the department of revenue and finance and accounts identified as owing under section 421.17 and the political contribution allowed under section 56.18 shall be satisfied.

3. Moneys in the fund are subject to appropriation as provided in section 314.28.

4. The department of revenue and finance shall adopt rules to administer this section.

5. This section is subject to repeal under section 422.12E.

2001 Acts, ch 160, §2, 3
Section applies retroactively to January 1, 2001, for tax years beginning on or after that date; 2001 Acts, ch 160, §3
NEW section

422.12E Income tax return checkoffs limited.

For tax years beginning on or after January 1, 1995, there shall be allowed no more than three income tax return checkoffs on each income tax return. When the same three income tax return checkoffs have been provided on the income tax return for three consecutive years, the checkoff for which the least amount has been contributed, in the aggregate for the first two tax years and through March 15 of the third tax year, shall be repealed. This section does not apply to the income tax return checkoff provided in section 56.18.

Checkoff for domestic abuse services; §236.15B
Checkoff for keep Iowa beautiful fund; §422.12A
Checkoff for Iowa state fair foundation; §422.12D
Checkoff for fish and game fund; §456A.16
Section not amended; footnote added

422.13 Return by individual.

1. Except as provided in subsection 1A, a resident or nonresident of this state shall make a return, signed in accordance with forms and rules prescribed by the director, if any of the following are applicable:

a. The individual has net income of nine thousand dollars or more for the tax year from sources taxable under this division.

b. The individual is claimed as a dependent on another person's return and has net income of five thousand dollars or more for the tax year from sources taxable under this division.

c. However, if that part of the net income of a nonresident which is allocated to Iowa pursuant to section 422.8, subsection 2, is less than one thousand dollars the nonresident is not required to make and sign a return except when the nonresident is subject to the state alternative minimum tax imposed pursuant to section 422.5, subsection 1, paragraph "k".

1A. Notwithstanding any other provision in

this section, a resident of this state is not required to make and file a return if the person's net income is equal to or less than the appropriate dollar amount listed in section 422.5, subsection 2, upon which tax is not imposed. A nonresident of this state is not required to make and file a return if the person's total net income in section 422.5, subsection 1, paragraph "j", is equal to or less than the appropriate dollar amount provided in section 422.5, subsection 2, upon which tax is not imposed. For purposes of this subsection, the amount of a lump sum distribution subject to separate federal tax shall be included in net income for purposes of determining if a resident is required to file a return and the portion of the lump sum distribution that is allocable to Iowa is included in total net income for purposes of determining if a nonresident is required to make and file a return.

2. For purposes of determining the requirement for filing a return under subsection 1, the combined net income of a husband and wife from sources taxable under this division shall be considered.

3. If the taxpayer is unable to make the return, the return shall be made by a duly authorized agent or by a guardian or other person charged with the care of the person or property of the taxpayer.

4. A nonresident taxpayer shall file a copy of the taxpayer's federal income tax return for the current tax year with the return required by this section.

5. Notwithstanding subsections 1 through 4 and sections 422.15 and 422.36, a partnership, a limited liability company whose members are taxed on the company's income under provisions of the Internal Revenue Code, trust, or corporation whose stockholders are taxed on the corporation's income under the provisions of the Internal Revenue Code may, not later than the due date for filing its return for the taxable year, including any extension thereof, elect to file a composite return for the nonresident partners, members, beneficiaries, or shareholders. The director may require that a composite return be filed under the conditions deemed appropriate by the director. A partnership, limited liability company, trust, or corporation filing a composite return is liable for tax required to be shown due on the return. All powers of the director and requirements of the director apply to returns filed under this subsection including, but not limited to, the provisions of this division and division VI of this chapter.

2001 Acts, ch 127, §7, 9, 10
2001 amendment to subsection 1, paragraph b, is effective May 16, 2001, and applies retroactively to tax years beginning on or after January 1, 2001;
2001 Acts, ch 127, §9, 10
Subsection 1, paragraph b amended

422.16A Job training withholding — certification and transfer.

Upon the completion by a business of its repayment obligation for a training project funded un-

der chapter 260E, including a job training project funded under section 15A.8 or repaid in whole or in part by the supplemental new jobs credit from withholding under section 15A.7 or section 15.331, the sponsoring community college shall report to the department of economic development the amount of withholding paid by the business to the community college during the final twelve months of withholding payments. 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 account established in section 15.342A 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 insufficient, the department shall prorate the quarterly amount credited to the workforce development fund account. The maximum amount from all employers which shall be transferred to the workforce development fund account in any year is four million dollars.

2001 Acts, ch 188, §26
Section amended

422.26 Lien of tax — collection — action authorized.

Whenever any taxpayer liable to pay a tax and penalty imposed refuses or neglects to pay the same, the amount, including any interest, penalty, or addition to such tax, together with the costs that may accrue in addition thereto, shall be a lien in favor of the state upon all property and rights to property, whether real or personal, belonging to said taxpayer.

The lien shall attach at the time the tax becomes due and payable and shall continue for ten years from the date an assessment is issued unless sooner released or otherwise discharged. The lien may, within ten years from the date an assessment is issued, be extended by filing for record a notice with the appropriate county official of any county and from the time of such filing, the lien shall be extended to the property in such county for ten years, unless sooner released or otherwise discharged, with no limit on the number of extensions. The director shall charge off any account whose lien is allowed to lapse and may charge off any account and release the corresponding lien before the lien has lapsed if the director determines under uniform rules prescribed by the director that the account is uncollectible or collection costs involved would not warrant collection of the amount due.

In order to preserve the aforesaid lien against subsequent mortgagees, purchasers or judgment creditors, for value and without notice of the lien, on any property situated in a county, the director shall file with the recorder of the county, in which said property is located, a notice of said lien.

The county recorder of each county shall keep in the recorder's office an index and record to show the following data, under the names of taxpayers,

arranged alphabetically:

1. The name of the taxpayer.
2. The name "State of Iowa" as claimant.
3. Time notice of lien was received.
4. Date of notice.
5. Amount of lien then due.
6. Date of assessment.
7. When satisfied.

The recorder shall endorse on each notice of lien the day, hour, and minute when received and preserve the same, and shall index the notice in the index and shall record the lien in the manner provided for recording real estate mortgages, and the lien shall be effective from the time of the indexing of the lien.

The department shall pay, from moneys appropriated to the department for this purpose, a recording fee as provided in section 331.604, for the recording of the lien, or for its satisfaction.

Upon the payment of a tax as to which the director has filed notice with a county recorder, the director shall forthwith file with said recorder a satisfaction of said tax and the recorder shall enter said satisfaction on the notice on file in the recorder's office and indicate said fact on the index aforesaid.

The department shall, substantially as provided in this chapter and chapter 626, proceed to collect all taxes and penalties as soon as practicable after they become delinquent, except that no property of the taxpayer is exempt from payment of the tax. If service has not been made on a distress warrant by the officer to whom addressed within five days from the date the distress warrant was received by the officer, the authorized revenue agents of the department may serve and make return of the warrant to the clerk of the district court of the county named in the distress warrant, and all subsequent procedure shall be in compliance with chapter 626.

The distress warrant shall be in a form as prescribed by the director. It shall be directed to the sheriff of the appropriate county and it shall identify the taxpayer, the tax type, and the delinquent amount. It shall direct the sheriff to distrain, seize, garnish, or levy upon, and sell, as provided by law, any real or personal property belonging to the taxpayer to satisfy the amount of the delinquency plus costs. It shall also direct the sheriff to make due and prompt return to the department or to the district court under chapters 626 and 642 of all amounts collected.

The attorney general shall, upon the request of the director, bring an action at law or in equity, as the facts may justify, without bond, to enforce payment of any taxes and penalties, and in such action the attorney general shall have the assistance of the county attorney of the county in which the action is pending.

It is expressly provided that the foregoing remedies of the state shall be cumulative and that no action taken by the director or attorney general

shall be construed to be an election on the part of the state or any of its officers to pursue any remedy hereunder to the exclusion of any other remedy provided by law.

For purposes of this section, “assessment issued” means the most recent assessment against the taxpayer for the tax type and tax period.

2001 Acts, ch 44, §18
Garnishment proceedings for collection of tax, §626.29 – 626.31
Unnumbered paragraphs 4 and 5 amended

422.33 Corporate tax imposed — credit.

1. A tax is imposed annually upon each 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, or if income is derived from trade or business and sources, all of which are not entirely in 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 corpo-

rate 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. a. The taxes imposed under this division shall be reduced by a state tax credit for increasing research activities in this state equal to the sum of the following:

(1) Six and one-half percent of the excess of qualified research expenses during the tax year over the base amount for the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities.

(2) Six and one-half percent of the basic research payments determined under section 41(e)(1)(A) of the Internal Revenue Code during the tax year based upon 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.

b. In lieu of the credit amount computed in paragraph "a", subparagraph (1), a corporation may elect to compute the credit amount for qualified research expenses incurred in this state in a manner consistent with the alternative incremental credit described in section 41(c)(4) of the Internal Revenue Code. The taxpayer may make this election regardless of the method used for the taxpayer's federal income tax. The election made under this paragraph is for the tax year and the taxpayer may use another or the same method for any subsequent year.

c. For purposes of the alternate credit computation method in paragraph "b", the credit percentages applicable to qualified research expenses described in clauses (i), (ii), and (iii) of section 41(c)(4)(A) of the Internal Revenue Code are one and sixty-five hundredths percent, two and twenty hundredths percent, and two and seventy-five hundredths percent, respectively.

d. For purposes of this subsection, "base amount", "basic research payment", and "qualified research expense" mean the same as defined for the federal credit for increasing research activities under section 41 of the Internal Revenue Code, except that for the alternative incremental credit such amounts are for research conducted within this state. For purposes of this subsection, "Internal Revenue Code" means the Internal Revenue Code in effect on January 1, 2001.

e. 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 franchise tax credit. A taxpayer who is a shareholder in a financial institution, as defined in section 581 of the Internal Revenue Code, which has in effect for the tax year an election under subchapter S of the Internal Revenue Code shall compute the amount of the tax credit by recomputing the amount of tax under this division by reducing the taxable income of the taxpayer by the taxpayer's pro rata share of the items of income and expense of the financial institution. This recomputed tax shall be subtracted from the tax computed under this division and the resulting amount, which shall not exceed the taxpayer's pro rata share of franchise tax paid by the financial institution, is the amount of the franchise tax credit allowed.

9. a. The taxes imposed under this division

shall be reduced by an assistive device tax credit. A small business purchasing, renting, or modifying an assistive device or making workplace modifications for an individual with a disability who is employed or will be employed by the small business is eligible, subject to availability of credits, to receive this assistive device tax credit which is equal to fifty percent of the first five thousand dollars paid during the tax year for the purchase, rental, or modification of the assistive device or for making the workplace modifications. Any credit in excess of the tax liability 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 tax year. If the small business elects to take the assistive device tax credit, the small business shall not deduct for Iowa tax purposes any amount of the cost of an assistive device or workplace modifications which is deductible for federal income tax purposes.

b. To receive the assistive device tax credit, the eligible small business must submit an application to the department of economic development. If the taxpayer meets the criteria for eligibility, the department of economic development shall issue to the taxpayer a certification of entitlement for the assistive device tax credit. However, the combined amount of tax credits that may be approved for a fiscal year under this subsection and section 422.11E shall not exceed five hundred thousand dollars. Tax credit certificates shall be issued on an earliest filed basis. The certification shall contain the taxpayer's name, address, tax identification number, the amount of the credit, and tax year for which the certificate applies. The taxpayer must file the tax credit certificate with the taxpayer's corporate income tax return in order to claim the tax credit. The departments of economic development and revenue and finance shall each adopt rules to jointly administer this subsection and shall provide by rule for the method to be used to determine for which fiscal year the tax credits are approved.

c. For purposes of this subsection:

(1) "*Assistive device*" means any item, piece of equipment, or product system which is used to increase, maintain, or improve the functional capabilities of an individual with a disability in the workplace or on the job. "*Assistive device*" does not mean any medical device, surgical device, or organ implanted or transplanted into or attached directly to an individual. "*Assistive device*" does not include any device for which a certificate of title is issued by the state department of transportation, but does include any item, piece of equipment, or product system otherwise meeting the definition of "*assistive device*" that is incorporated, attached, or included as a modification in or to such a device issued a certificate of title.

(2) "*Disability*" means the same as defined in section 225C.46.

(3) "*Small business*" means a business that either had gross receipts for its preceding tax year of three million dollars or less or employed not more than fourteen full-time employees during its preceding tax year.

(4) "*Workplace modifications*" means physical alterations to the work environment.

10. a. The taxes imposed under this division shall be reduced by a property rehabilitation tax credit equal to the amount as computed under chapter 404A for rehabilitating eligible property. Any credit in excess of the tax liability shall be refunded as provided in section 404A.4, subsection 3.

b. For purposes of this subsection, "*eligible property*" means the same as used in section 404A.1.

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

(1) "*Ethanol blended gasoline*", "*gasoline*", "*metered pump*", "*retail dealer*", "*sell*", and "*service station*" mean the same as defined in section 422.11C.

(2) "*Tax credit*" means the designated ethanol blended gasoline tax credit as provided in this subsection.

b. The taxes imposed under this division shall be reduced by an ethanol blended gasoline tax credit for each tax year that the taxpayer is eligible to claim the tax credit under this subsection. In order to be eligible, all of the following must apply:

(1) The taxpayer is a retail dealer.

(2) The taxpayer operates at least one service station at which more than sixty percent of the total gallons of gasoline sold and dispensed through one or more metered pumps by the taxpayer is ethanol blended gasoline.

(3) The taxpayer complies with requirements of the department required to administer this subsection.

c. The tax credit shall be calculated separately for each service station site operated by the taxpayer. The amount of the tax credit for each eligible service station is two and one-half cents multiplied by the total number of gallons of ethanol blended gasoline sold and dispensed through all metered pumps located at that service station during the tax year in excess of sixty percent of all gasoline sold and dispensed through metered pumps at that service station during the tax year.

d. Any credit in excess of the taxpayer's tax liability shall be refunded. In lieu of claiming a refund, the taxpayer may elect to have the overpayment shown on the taxpayer's final, completed return credited to the tax liability for the following tax year.

2001 Acts, ch 123, §3, 6; 2001 Acts, ch 127, §§ 8 – 10
2001 amendment to subsection 5, paragraph d, is effective May 16, 2001.

and applies retroactively to tax years beginning on or after January 1, 2000; 2001 Acts, ch 127, §9, 10

Ethanol blended gasoline tax credit provided in subsection 11 applies to tax years beginning on or after January 1, 2002; implementation; 2001 Acts, ch 123, §6

Subsection 5, paragraph d amended
NEW subsection 11

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 work opportunity 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. An individual with a disability 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 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 168(f)(8) of the Internal Revenue Code for property placed in service by the transferee prior to January 1, 1986, to the extent that the amounts deducted and the amounts included in income are not otherwise deductible or included in income under the other provisions of the Internal Revenue Code as amended to and including December 31, 1985. Entitlement to depreciation on any property involved in a sale-leaseback agreement which is placed in service by the transferee prior to January 1, 1986, shall be determined under the Internal Revenue Code as amended to and including December 31, 1985, excluding section 168(f)(8) in making the determination.

9. 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 for a net operating loss incurred in a presidentially declared disaster area by a taxpayer engaged in a small business or in the trade or business of farming. For all other Iowa net operating losses, the net operating loss shall be carried back two 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*” or “*f*” or if not required to be carried back shall be carried forward twenty 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 twenty 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.

f. Notwithstanding paragraph “*a*”, for a taxpayer who is engaged in the trade or business of farming as defined in section 263A(e)(4) of the In-

ternal Revenue Code and has a loss from farming as defined in section 172(b)(1)(F) of the Internal Revenue Code including modifications prescribed by rule by the director, the Iowa loss from the trade or business of farming is a net operating loss which may be carried back five taxable years prior to the taxable year of the loss.

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. Subtract, to the extent not deducted for federal income tax purposes, the amount of any gift, grant, or donation made to the Iowa educational savings plan trust, as created in chapter 12D, for deposit in the endowment fund of that trust.

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 27, 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 27.

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.

18. Add, to the extent not already included, income from the sale of obligations of the state and its political divisions. Income from the sale of these obligations is exempt from the taxes imposed by this division only if the law authorizing

these obligations specifically exempts the income from the sale from the state corporate income tax.

2001 Acts, ch 116, §7, 28
 Subsection 14 applies to contributions, gifts, grants, and donations made on or after July 1, 1998, for tax years beginning on or after that date; 98 Acts, ch 1172, §14

Subsection 18 takes effect May 3, 2001, and applies retroactively to January 1, 2001, for tax years beginning on or after that date; 2001 Acts, ch 116, §28

For future amendments to this section effective on the later of July 1, 2002, or upon the enactment of the interstate compact for adult offender supervision by thirty-five states, see 2001 Acts, ch 15, §3, 4; 2001 Acts, 2nd Ex, ch 6, §23 - 26, 37

NEW subsection 18

Footnote regarding applicability of subsection 14 corrected

422.36 Returns.

1. A corporation shall make a return and the return shall be signed by the president or other duly authorized officer in accordance with forms and rules prescribed by the director. Before a corporation is dissolved and its assets distributed it shall make a return for settlement of the tax for income earned in the income year up to its final date of dissolution.

2. When any corporation, liable to taxation under this division, conducts its business in such a manner as either directly or indirectly to benefit the members or stockholders thereof or any person interested in such business by selling its products or the goods or commodities in which it deals at less than the fair price which might be obtained therefor, or where a corporation, a substantial portion of whose capital stock is owned either directly or indirectly by another corporation, acquires and disposes of the products, goods or commodities of the corporation so owning a substantial portion of its stock in such a manner as to create a loss or improper net income for either of said corporations, or where a corporation, owning directly or indirectly a substantial portion of the stock of another corporation, acquires and disposes of the products, goods, or commodities, of the corporation of which it so owns a substantial portion of the stock, in such a manner as to create a loss or improper net income for either of said corporations, the department may determine the amount of taxable income of either or any of such corporations for the calendar or fiscal year, having due regard to the reasonable profits which, but for such arrangement or understanding, might or could have been obtained, by the corporation or corporations liable to taxation under this division, from dealing in such products, goods, or commodities.

3. Where the director has reason to believe that any person or corporation so conducts a trade or business as either directly or indirectly to distort the person's or corporation's true net income and the net income properly attributable to the state, whether by the arbitrary shifting of income, through price fixing, charges for services, or otherwise, whereby the net income is arbitrarily assigned to one or another unit in a group of taxpayers carrying on business under a substantially common control, the director may require such

facts as are necessary for the proper computation of the entire net income and the net income properly attributable to the state, and shall determine the same, and in the determination thereof the director shall have regard to the fair profits which would normally arise from the conduct of the trade or business.

4. Foreign corporations shall file a copy of their federal income tax return for the current tax year with the return required by this section.

5. Where a corporation is not subject to income tax and the stockholders of such corporation are taxed on the corporation's income under the provisions of the Internal Revenue Code, the same tax treatment shall apply to such corporation and such stockholders for Iowa income tax purposes.

6. A foreign corporation is not required to file a return if its only activities in Iowa are the storage of goods for a period of sixty consecutive days or less in a warehouse for hire located in this state whereby the foreign corporation transports or causes a carrier to transport such goods to that warehouse and provided that none of the goods are delivered or shipped so as to be included in the gross sales of the corporation within this state as provided in section 422.33, subsection 2, paragraph "b", subparagraph (6).

2001 Acts, ch 97, §1, 2

Subsection 6 is effective April 30, 2001, and applies retroactively to January 1, 2001, for tax years beginning on or after that date; 2001 Acts, ch 97, §2

NEW subsection 6

DIVISION IV

RETAIL SALES TAX

Exemption from sales and use tax if federal Sales Tax Holiday Act is enacted by federal government; 2001 Acts, 2nd Ex, ch 6, §32, 37

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, and production from aquaculture. "Agricultural products" include flowering, ornamental, or vegetable plants and those products of aquaculture.

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 the service is used in processing of tangible personal property for use in 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 the services 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, but if any accounts are thereafter collected by the taxpayer, a tax shall be paid upon the amounts collected.

7. "*Nonresidential commercial operations*" means industrial, commercial, mining, and agricultural operations, whether for profit or not, but does not include apartment complexes and manufactured home communities or 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.

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.

9. Reserved.

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, including adjuvants, surfactants, and other products directly related to the application enhancement of those products, and 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 use in cultivation of agricultural products by aquaculture, 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 used in processing of tangible personal property for use in 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 of the service.

"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.

2001 Acts, ch 153, §16
Former subsection 9 redesignated editorially as subsection 8, unnumbered paragraph 2
Subsection 9 reserved editorially
Terminology change applied

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 gen-

eral 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.

If the optional service or warranty contract is a computer software maintenance or support service contract and there is no separately stated fee for the taxable personal property or for the non-taxable service, the tax of five percent imposed by this subsection shall be imposed on fifty percent of the gross receipts from the sale of such contract. If the contract provides for technical support services only, no tax shall be imposed under this subsection. The provisions of this subsection also apply to the tax imposed by chapter 423.

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, manufactured or mobile home which is tangible personal property, or tourist court, or in any place where sleeping accommodations are furnished to tran-

sient 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 manufactured or 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, excluding services provided by

massage therapists licensed under chapter 152C; 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. A tax of five percent is imposed upon the gross receipts from the sales of prepaid telephone calling cards and prepaid authorization numbers. For the purpose of this division, the sales of prepaid telephone calling cards and prepaid authorization numbers are sales of tangible personal property.

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.

14. An increase or decrease in the retail sales tax rate shall only be effective on January 1 or July 1, but not sooner than ninety days after enactment of the rate increase or decrease.

15. For purposes of this division, a sale of tangible personal property does not occur if the substance of the transaction is delivered to the purchaser digitally, electronically, or utilizing cable, or by radio waves, microwaves, satellites, or fiber optics.

This subsection is repealed December 31, 2002.

16. *a.* A tax of five percent is imposed upon the gross receipts from sales of bundled services contracts. For purposes of this subsection, a “*bundled services contract*” means an agreement providing for a retailer’s performance of services, one or more of which is a taxable service enumerated in this section and one or more of which is not, in return for a consumer’s or user’s single payment for the performance of the services, with no separate statement to the consumer or user of what portion of that payment is attributable to any one service which is a part of the contract.

b. For purposes of the administration of the tax on bundled services contracts, the director may enter into agreements of limited duration with individual retailers, groups of retailers, or organizations representing retailers of bundled services contracts. Such an agreement shall impose the tax rate only upon that portion of the gross receipts from a bundled services contract which is attributable to taxable services provided under the contract.

17. A tax of five percent is imposed upon the gross receipts from any mobile telecommunication service which this state is allowed to tax by the provisions of the federal Mobile Telecommunications Sourcing Act, Pub. L. No. 106-252, 4 U.S.C. § 116 et seq. For purposes of this subsection, taxes on mobile telecommunications service, as defined under the federal Mobile Telecommunications Sourcing Act, that are deemed to be provided by the customer’s home service provider shall be paid to the taxing jurisdiction whose territorial limits encompass the customer’s place of primary use, regardless of where the mobile telecommunication service originates, terminates, or passes through and shall in all other respects be taxed in conformity with the federal Mobile Telecommunications Sourcing Act. All other provisions of the federal Mobile Telecommunications Sourcing Act are adopted by the state of Iowa and incorporated into this subsection by reference. With respect to mobile telecommunications service under the federal Mobile Telecommunications Sourcing Act the di-

rector shall, if requested, enter into agreements consistent with the provisions of the federal Act.

2001 Acts, ch 150, §1; 2001 Acts, ch 153, §15; 2001 Acts, ch 176, §80
Local sales and services tax; §422B.8 et seq.
Terminology change applied
NEW subsections 16 and 17

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. This exemption does not apply to the transportation of electric energy. This exemption does not apply to the transportation of natural gas.

2A. The gross receipts from charges paid for the delivery of electricity or natural gas if the sale, furnishing, or service of the electricity or natural gas or its use is exempt from the tax on gross receipts imposed under this division or from the use tax imposed under chapter 423.

3. The gross receipts from sales or rental of tangible personal property, or services rendered by any entity where the profits from the sales or rental of the tangible personal property or services rendered are used by or donated to a nonprofit entity which is exempt from federal income taxation pursuant to section 501(c)(3) of the Internal Revenue Code, a government entity, or a private educational institution, and where the entire proceeds from the sales, rental, or services are expended for any of the following purposes:

a. Educational.

b. Religious.

c. Charitable. A charitable act is an act done out of goodwill, benevolence, and a desire to add or improve the good of humankind in general or any class or portion of humankind, with no pecuniary profit inuring to the person performing the service or giving the gift.

This exemption does not apply to 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 profits from the sales, rental, or services are not used by or donated to the appropriate entity and 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 and sales of aircraft subject to registration under section 328.20.

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”.

7. A private nonprofit educational institution in this state, nonprofit private museum in this state, 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 in this state if the property be-

comes 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 one year after the final settlement has been made, make application to the department for any refund of the amount of the sales or use tax which shall have been paid upon any goods, wares or merchandise, or services rendered, furnished, or performed, the application to be made in the manner and upon forms to be provided by the department, and the department shall forthwith audit the claim and, if approved, issue a warrant to the governmental unit, educational institution, or nonprofit private museum in the amount of the sales or use tax which has been paid to the state of Iowa under the 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.

7A. The refund of sales and use tax paid on transportation construction projects let by the

state department of transportation is subject to the special provisions of this subsection.

a. A contractor awarded a contract for a transportation construction project is considered the consumer of all building materials, building supplies and equipment and shall pay sales tax to the supplier or remit consumer use tax directly to the department.

b. The contractor is not required to file information with the department of transportation stating the amount of goods, wares, or merchandise, or services rendered, furnished, or performed and used in the performance of the contract or the amount of sales or use tax paid.

c. The department of transportation shall file a refund claim based on a formula that considers the following:

(1) The quantity of material to complete the contract, and quantities of items of work.

(2) The estimated cost of these materials included in the items of work, and the state sales or use tax to be paid on the tax rate in effect in section 422.43.

The quantity of materials shall be determined after each letting based on the contract quantities of all items of work let to contract. The quantity of individual component materials required for each item shall be determined and maintained in a database. The total quantities of materials shall be determined by multiplying the quantities of component materials for each contract item of work by the total quantities of each contract item for each letting. Where variances exist in the cost of materials, the lowest cost shall be used as the base cost.

d. Only the state sales or use tax is refundable. Local option taxes paid by the contractor are not refundable.

7B. The gross receipts from the sale of building materials, supplies, or equipment sold to rural water districts organized under chapter 504A as provided in chapter 357A and used for the construction of facilities of a rural water district.

8. The gross receipts of all sales of goods, wares, merchandise, or services, used for educational purposes to any private nonprofit educational institution in this state. For the purpose of this subsection, "educational institution" means an institution which primarily functions as a school, college, or university with students, faculty, and an established curriculum. The faculty of an educational institution must be associated with the institution and the curriculum must include basic courses which are offered every year. "Educational institution" includes an institution primarily functioning as a library.

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.

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 five months, 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 images; layouts; lettering; line negatives and positives; linotypes; lithographic offset plates; magnesium 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; photopolymer 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; purchased author alterations; purchased composition; purchased phototypesetting; purchased stripping and paste-ups; red litho tape; reducers; roller covering; screen tints; sketches; stepped plates; stereotypes; strip types; substrate; tints; tissue overlays; toners; transparencies; tympan; typesetting; typography; 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 complete 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 ultimate sale at retail or means that portion of a person's business used to complete a finished printed packaging material used to package a product for ultimate sale at retail. "Printer" does not mean an in-house printer who prints or copy-rights its own materials.

22. The gross receipts from the sale or rental of tangible personal property or from services performed, rendered, or furnished to the following

nonprofit corporations:

a. Residential care facilities and intermediate care facilities for persons with mental retardation and residential care facilities for persons with mental illness licensed by the department of inspections and appeals under chapter 135C.

b. Residential facilities licensed by the department of human services pursuant to chapter 237, other than those maintained by individuals as defined in section 237.1, subsection 7.

c. Rehabilitation facilities that provide accredited rehabilitation services to persons with disabilities which are accredited by the commission on accreditation of rehabilitation facilities or the accreditation council for services for persons with mental retardation and other persons with developmental disabilities and adult day 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. § 254c and migrant health centers as defined in 42 U.S.C. § 254b.

23. The gross receipts from the sales of special fuel for diesel engines consumed or used in the operation of ships, barges, or waterborne vessels which are used primarily in or for the transportation of property or cargo, or the conveyance of persons for hire on rivers bordering on the state if the fuel is delivered by the seller to the purchaser's barge, ship, or waterborne vessel while it is afloat upon such a river.

24. The gross receipts from the rental of motion picture films, video and audio tapes, video and audio discs, records, photos, copy, scripts or other media used for the purpose of transmitting that which can be seen, heard or read, if either of the following conditions are met:

a. The lessee imposes a charge for the viewing or the rental of such media and the charge for the viewing or the rental is subject to taxation under this division or chapter 423.

b. The lessee broadcasts the contents of such media for public viewing or listening.

The exemption provided for in this subsection applies to all payments on or after July 1, 1984.

25. The gross receipts from services rendered, furnished or performed by specialized flying implements of husbandry used for agricultural aerial spraying and aerial commercial and charter transportation services.

26. The gross receipts from the sale or rental of farm machinery and equipment, including auxiliary attachments which improve the performance, safety, operation, or efficiency of the machinery and equipment and replacement parts, if the following conditions are met:

a. The farm machinery and equipment shall be directly and primarily used in production of agricultural products.

b. The farm machinery and equipment shall constitute self-propelled implements or implements customarily drawn or attached to self-propelled implements or the farm machinery or equipment is a grain dryer.

c. The replacement part is essential to any repair or reconstruction necessary to the farm machinery's or equipment's exempt use in the production of agricultural products.

Vehicles subject to registration, as defined in section 423.1, or replacement parts for such vehicles, shall not be eligible for this exemption.

26A. The gross receipts from the sale or rental of irrigation equipment, whether installed above or below ground, to a contractor or farmer if the equipment will be primarily used in agricultural operations.

27. *a.* The gross receipts from the sale or rental of computers, machinery, and equipment, including replacement parts, and materials used to construct or self-construct computers, machinery, and equipment if such items are any of the following:

(1) Directly and primarily used in processing by a manufacturer.

(2) Directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, machinery, and equipment used in processing by a manufacturer, including test equipment used to control quality and specifications of the product.

(3) Directly and primarily used in research and development of new products or processes of processing.

(4) Computers used in processing or storage of data or information by an insurance company, financial institution, or commercial enterprise.

(5) Directly and primarily used in recycling or reprocessing of waste products.

(6) Pollution control equipment used by a manufacturer, including but not limited to that required or certified by an agency of this state or of the United States government.

b. The gross receipts from the sale of fuel used in creating heat, power, steam, or for generating electrical current, or from the sale of electricity, consumed by computers, machinery, or equipment used in an exempt manner described in paragraph "a", subparagraph (1), (2), (3), (5), or (6).

c. However, the gross receipts from the sale or rental of the following shall not be exempt from the tax imposed by this division:

(1) Hand tools.

(2) Point-of-sale equipment and computers.

(3) Industrial machinery, equipment, and computers, including pollution control equipment, within the scope of section 427A.1, subsection 1, paragraphs "h" and "i".

(4) Vehicles subject to registration, except vehicles subject to registration which are directly and primarily used in recycling or reprocessing of

waste products.

d. As used in this subsection:

(1) “*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.

(2) “*Financial institution*” means as defined in section 527.2.

(3) “*Insurance company*” means an insurer organized or operating under chapter 508, 514, 515, 518, 518A, 519, or 520, or authorized to do business in Iowa as an insurer or an insurance producer under chapter 522B.

(4) “*Manufacturer*” means as defined in section 428.20, but also includes contract manufacturers. A contract manufacturer is a manufacturer that otherwise falls within the definition of manufacturer under section 428.20, except that a contract manufacturer does not sell the tangible personal property the contract manufacturer processes on behalf of other manufacturers. A business engaged in activities subsequent to the extractive process of quarrying or mining, such as crushing, washing, sizing, or blending of aggregate materials, is a manufacturer with respect to these activities.

(5) “*Processing*” means a series of operations in which materials are manufactured, refined, purified, created, combined, or transformed by a manufacturer, ultimately into tangible personal property. Processing encompasses all activities commencing with the receipt or producing of raw materials by the manufacturer and ending at the point products are delivered for shipment or transferred from the manufacturer. Processing includes but is not limited to refinement or purification of materials; treatment of materials to change their form, context, or condition; maintenance of the quality or integrity of materials, components, or products; maintenance of environmental conditions necessary for materials, components, or products; quality control activities; and construction of packaging and shipping devices, placement into shipping containers or any type of shipping devices or medium, and the movement of materials, components, or products until shipment from the processor.

(6) “*Receipt or producing of raw materials*” means activities performed upon tangible personal property only. With respect to raw materials produced from or upon real estate, the receipt or producing of raw materials is deemed to occur immediately following the severance of the raw materials from the real estate.

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.

33A. The gross receipts from the sale of electricity to water companies assessed for property tax pursuant to sections 428.24, 428.26, and 428.28 which is used solely for the purpose of pumping water from a river or well.

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 certificated air carrier operation.

38B. The gross receipts from 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 nonscheduled interstate federal aviation administration certificated air carrier operation operating under 14 C.F.R. ch. 1, pt. 135.

38C. The gross receipts from the sale of aircraft to an aircraft dealer who in turn rents or leases the aircraft if all of the following apply:

a. The aircraft is kept in the inventory of the dealer for sale at all times.

b. The dealer reserves the right to immediately take the aircraft from the renter or lessee when a buyer is found.

c. The renter or lessee is aware that the dealer will immediately take the aircraft when a buyer is found.

If an aircraft exempt under this subsection is used for any purpose other than leasing or renting, or the conditions in paragraphs “a”, “b”, and “c” are not continuously met, the dealer 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.

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, used in aquaculture 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, use in aquaculture 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.

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 or of services performed on property which the retailer 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 retailer’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. Reserved.

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 pro-

vide the notification service.

50. The gross receipts from sales or services rendered, furnished, or performed by the state fair organized under chapter 173 or a fair society organized under chapter 174.

51. The gross receipts from the sale of property which is a container, label, carton, pallet, packing case, wrapping, baling wire, twine, bag, bottle, shipping case, or other similar article or receptacle sold for use in agricultural, livestock, or dairy production.

52. The gross receipts from the sales of food and beverages for human consumption by a nonprofit organization which principally promotes a food or beverage product for human consumption produced, grown, or raised in this state and whose income is exempt from federal taxation under section 501(c) of the Internal Revenue Code.

53. The gross receipts from the sale of tangible property or from services performed, rendered, or furnished to a statewide nonprofit organ procurement organization, as defined in section 142C.2.

54. The gross receipts from the sale or rental of tangible personal property or from services performed, rendered, or furnished to a nonprofit hospital licensed pursuant to chapter 135B to be used in the operation of the hospital.

54A. The gross receipts from the sale or rental of tangible personal property or from services performed, rendered, or furnished to a freestanding nonprofit hospice facility which operates a hospice program as defined in 42 C.F.R. ch. IV, § 418.3, which property or services are to be used in the hospice program.

54B. The gross receipts from all sales of goods, wares, or merchandise, or from services rendered, furnished, or performed which are used in the fulfillment of a written construction contract with a nonprofit hospital licensed pursuant to chapter 135B if all of the following apply:

a. The sales and delivery of the goods, wares, or merchandise, or the services rendered, furnished, or performed occurred between July 1, 1998, and December 31, 2001.

b. The written construction contract was entered into prior to December 31, 1999, or bonds to fund the construction were issued prior to December 31, 1999.

c. The sales or services were purchased by a contractor as the agent for the hospital or were purchased directly by the hospital.

55. The gross receipts from the sale of argon and other similar gases to be used in the manufacturing process.

56. The gross receipts from charges paid to a provider for access to on-line computer services. For purposes of this subsection, "*on-line computer service*" means a service that provides or enables computer access by multiple users to the internet or to other information made available through a computer server.

57. The gross receipts from the sales of live-

stock ear tags by a nonprofit organization whose income is exempt from federal taxation under section 501(c)(6) of the Internal Revenue Code where the proceeds are used in bovine research programs selected or approved by such organization.

58. The gross receipts from the services rendered, furnished, or performed of the sale or rental of information services. "*Information services*" means every business activity, process, or function by which a seller or its agent accumulates, prepares, organizes, or conveys data, facts, knowledge, procedures, and like services to a buyer or its agent of such information through any tangible or intangible medium. Information accumulated, prepared, or organized for a buyer or its agent is an information service even though it may incorporate preexisting components of data or other information. Information services include, but are not limited to, database files, mailing lists, subscription files, market research, credit reports, surveys, real estate listings, bond rating reports, abstracts of title, bad check lists, broadcasting rating services, wire services, and scouting reports, or other similar items.

59. *a.* The gross receipts from the sale of an article of clothing or footwear designed to be worn on or about the human body if all of the following apply:

(1) The sales price of the article is less than one hundred dollars.

(2) The sale takes place during a period beginning at 12:01 a.m. on the first Friday in August and ending at midnight on the following Saturday.

b. This subsection does not apply to any of the following:

(1) Special clothing or footwear that is primarily designed for athletic activity or protective use and that is not normally worn except when used for the athletic activity or protective use for which it is designed.

(2) Accessories, including jewelry, handbags, luggage, umbrellas, wallets, watches, and similar items carried on or about the human body, without regard to whether worn on the body in a manner characteristic of clothing.

(3) The rental of clothing or footwear.

60. *a.* The gross receipts from the sale, furnishing, or service of metered gas to provide energy for residential customers and the gross receipts from the sale, furnishing, or service of fuel, including propane and heating oil, used to provide heat for residential dwellings and units of apartment and condominium complexes used for human occupancy.

b. Paragraph "*a*" applies to the gross receipts from the sale, furnishing, or service of metered gas for energy if the date of the utility billing of the customer is during March 2001, or April 2001, or applies to the gross receipts from the sale, furnishing, or service of fuel used for heating purposes if such sale, furnishing, or service occurs during the period beginning with February 5, 2001, and end-

ing on March 31, 2001.

61. *a.* Subject to paragraph “*b*”, the gross receipts from the sale, furnishing, or service of metered gas, electricity, and fuel, including propane and heating oil to residential customers which is used to provide energy for residential dwellings and units of apartment and condominium complexes used for human occupancy.

b. The exemption in this subsection shall be phased in by means of a reduction in the tax rate as follows:

(1) If the date of the utility billing or meter reading cycle of the residential customer for the sale, furnishing, or service of metered gas and electricity is on or after January 1, 2002, through December 31, 2002, or if the sale, furnishing, or service of fuel for purposes of residential energy and the delivery of the fuel occurs on or after January 1, 2002, through December 31, 2002, the rate of tax is four percent of the gross receipts.

(2) If the date of the utility billing or meter reading cycle of the residential customer for the sale, furnishing, or service of metered gas and electricity is on or after January 1, 2003, through December 31, 2003, or if the sale, furnishing, or service of fuel for purposes of residential energy and the delivery of the fuel occurs on or after January 1, 2003, through December 31, 2003, the rate of tax is three percent of the gross receipts.

(3) If the date of the utility billing or meter reading cycle of the residential customer for the sale, furnishing, or service of metered gas and electricity is on or after January 1, 2004, through December 31, 2004, or if the sale, furnishing, or service of fuel for purposes of residential energy and the delivery of the fuel occurs on or after January 1, 2004, through December 31, 2004, the rate of tax is two percent of the gross receipts.

(4) If the date of the utility billing or meter reading cycle of the residential customer for the sale, furnishing, or service of metered gas and electricity is on or after January 1, 2005, through December 31, 2005, or if the sale, furnishing, or service of fuel for purposes of residential energy and the delivery of the fuel occurs on or after January 1, 2005, through December 31, 2005, the rate of tax is one percent of the gross receipts.

(5) If the date of the utility billing or meter reading cycle of the residential customer for the sale, furnishing, or service of metered gas and electricity is on or after January 1, 2006, or if the sale, furnishing, or service of fuel for purposes of residential energy and the delivery of the fuel occurs on or after January 1, 2006, the rate of tax is zero percent of the gross receipts.

c. The exemption in this subsection does not apply to local option sales and services tax imposed pursuant to chapters 422B and 422E.

62. The gross receipts from sales of goods, wares, or merchandise, or from services performed, rendered, or furnished to a nonprofit pri-

vate art center to be used in the operation of the art center.

[A portion of subsection 2 was inadvertently omitted in the 2001 Code] 2001 Acts, ch 1, §1 – 4; 2001 Acts, ch 16, §4, 37; 2001 Acts, ch 64, §11; 2001 Acts, ch 115, §1, 2; 2001 Acts, ch 149, §1 – 3; 2001 Acts, ch 150, §2 – 4, 26

*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

2001 amendments to subsections 3 and 8 are effective January 1, 2002; 2001 Acts, ch 150, §26

Subsection 26A is effective May 18, 2001, and applies retroactively to April 1, 1995; refunds limited to aggregate of \$25,000; filing deadline; 2001 Acts, ch 149, §2, 3

2001 amendment to subsection 27, paragraph d, subparagraph (3) is effective January 1, 2002; 2001 Acts, ch 16, §37

Alternative billing procedure for utilities to provide exemption in subsection 60; 2001 Acts, ch 1, §3, 4

99 Acts, ch 151, §15, 89, amendment to subsection 2 reinserted editorially

NEW subsection 2A

Subsection 3 stricken and rewritten

Subsection 8 amended

Subsection 22, paragraph c amended

NEW subsection 26A

Subsection 27, paragraph d, subparagraph (3) amended

NEW subsections 60 – 62

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. Reserved.

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 purchas-

ers for a nontaxable purpose. The department shall also allow the use of exemption certificates for those circumstances in which a sale is taxable but the seller is not obligated to collect tax from the buyer.

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 a nontaxable purpose and is not a retail sale as defined in section 422.42, subsection 14, or the seller is not obligated to collect tax due, 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 as a result the tangible personal property or services are used or disposed of by the purchaser in a nonexempt manner or the purchaser becomes obligated to pay the tax, 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 de-

partment 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 sixty days after the 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 sixty days after the 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, for use in aquaculture production, 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.

2001 Acts, ch 116, §8
Subsection 2 stricken

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 application. 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 or a place of relocation within the state if the ownership remains the same.

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.

Persons engaged in selling tangible personal property or performing services shall not be required to obtain or retain a sales tax permit for a place of business at which taxable sales of tangible personal property or taxable performance of services will not occur.

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.

8. *a.* Except as provided in paragraph “b”, purchasers, users, and consumers of tangible personal property or enumerated services taxed pursuant to this division, chapter 423, or chapter 422B may be authorized, pursuant to rules adopted by the director, to remit tax owed directly to the department instead of the tax being collected and paid by the seller. To qualify for a direct pay tax permit, the purchaser, user, or consumer must accrue a tax liability of more than four thou-

sand dollars in tax under this division and chapter 423, in a semimonthly period and make deposits and file returns pursuant to section 422.52. This authority shall not be granted or exercised except upon application to the director and then only after issuance by the director of a direct pay tax permit.

b. The granting of a direct pay tax permit is not authorized for any of the following:

(1) Taxes imposed on the sales, furnishing, or service of gas, electricity, water, heat, pay television service, and communication service.

(2) Taxes imposed under sections 423.7 and 423.7A and chapter 422C.

2001 Acts, ch 116, §9
Subsection 3 amended

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. Income from sales of obligations of the state and its political subdivisions and interest and dividend income from these obligations are exempt from the taxes imposed by this division only if the law authorizing the obligations specifically exempts the income from the sale and interest and dividend income from the state franchise tax.

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.

g. Where a financial institution as defined in section 581 of the Internal Revenue Code is not subject to income tax and the shareholders of the financial institution are taxed on the financial institution’s income under the provisions of the Internal Revenue Code, such tax treatment shall be disregarded and the financial institution shall compute its net income for franchise tax purposes in the same manner under this subsection as a financial institution that is subject to or liable for federal income tax under the Internal Revenue Code in effect for the applicable year.

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.

2001 Acts, ch 116, §10, 28
2001 amendment to subsection 3, paragraph b, takes effect May 3, 2001, and applies retroactively to tax years beginning on or after January 1, 2001;
2001 Acts, ch 116, §28
Subsection 3, paragraph b amended

422.110 Income tax credit in lieu of refund.

In lieu of the fuel tax refund provided in section 452A.17, a person or corporation subject to taxation under division II or III of this chapter may elect to receive an income tax credit. 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, limited liability company, or corporation which is not subject to a tax under division II or III of this chapter as a partnership,

limited liability company, 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 is subject to the conditions provided in section 452A.17 with

the exception that the income tax credit is not available for refunds relating to casualty losses, transport diversions, pumping credits, blending errors, idle time, power takeoffs, reefer units, and exports by distributors.

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.

2001 Acts, ch 116, §11
Unnumbered paragraph 1 amended

CHAPTER 422A

HOTEL AND MOTEL TAX

422A.1 Hotel and motel tax.

A city or county may impose by ordinance of the city council or by resolution of the board of supervisors a hotel and motel tax, at a rate not to exceed seven percent, which shall be imposed in increments of one or more full percentage points upon the gross receipts from the renting of sleeping rooms, apartments, or sleeping quarters in a hotel, motel, inn, public lodging house, rooming house, manufactured or mobile home which is tangible personal property, or tourist court, or in any place where sleeping accommodations are furnished to transient guests for rent, whether with or without meals; except the gross receipts from the renting of sleeping rooms in dormitories and in memorial unions at all universities and colleges located in the state of Iowa and the guests of a religious institution if the property is exempt under section 427.1, subsection 8, and the purpose of renting is to provide a place for a religious retreat or function and not a place for transient guests generally. The tax when imposed by a city shall apply only within the corporate boundaries of that city and when imposed by a county shall apply only outside incorporated areas within that county. "Renting" and "rent" include any kind of direct or indirect charge for such sleeping rooms, apartments, or sleeping quarters, or their use. However, the tax does not apply to the gross receipts from the renting of a sleeping room, apartment, or sleeping quarters while rented by the same person for a period of more than thirty-one consecutive days.

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 the hotel and motel tax, the county auditor shall give written notice by sending a copy of the abstract of votes from the favorable election to the director of revenue and finance.

A local hotel and motel tax shall be imposed on January 1, April 1, July 1, or October 1, following the notification of the director of revenue and finance. Once imposed, the tax shall remain in effect at the rate imposed for a minimum of one year.

A local hotel and motel tax shall terminate only on March 31, June 30, September 30, or December 31. At least forty-five days prior to the tax being effective or prior to a revision in the tax rate, or prior to the repeal of the tax, a city or county shall provide notice by mail of such action to the director of revenue and finance.

A city or county shall impose a hotel and motel tax or increase the tax rate, only after an election at which a majority of those voting on the question favors imposition or increase. However, a hotel and motel tax shall not be repealed or reduced in rate if obligations are outstanding which are payable as provided in section 422A.2, unless funds sufficient to pay the principal, interest, and premium, if any, on the outstanding obligations at and prior to maturity have been properly set aside and pledged for that purpose. The election shall be held at the time of that city's or county's general election or at the time of a special election.

The director of revenue and finance shall administer a local hotel and motel tax as nearly as possible in conjunction with the administration of the state sales tax law. The director shall provide appropriate forms, or provide on the regular state tax forms, for reporting local hotel and motel tax liability. All moneys received or refunded one hundred eighty days after the date on which a city or county terminates its local hotel and motel tax shall be deposited in or withdrawn from the state general fund.

The director, in consultation with local officials, shall collect and account for a local hotel and motel tax and shall credit all revenues to a "local transient guest tax fund" established by section 422A.2.

No tax permit other than the state tax permit required under section 422.53 may be required by local authorities.

The tax levied shall be in addition to any state sales tax imposed under section 422.43. Section 422.25, subsection 4, sections 422.30, 422.48 to 422.52, 422.54 to 422.58, 422.67, 422.68, 422.69, subsection 1, and sections 422.70 to 422.75, consis-

tent with the provisions of this chapter, apply with respect to the taxes authorized under this chapter, in the same manner and with the same effect as if the hotel and motel taxes were retail sales taxes within the meaning of those statutes. Notwithstanding this paragraph, the director shall provide for quarterly filing of returns as prescribed in section 422.51 and for other than quarterly filing of returns as prescribed in section 422.51, subsection 2. The director may require all persons, as defined in section 422.42, who are engaged in the business of deriving gross receipts subject to tax under this chapter, to register with the department.

2001 Acts, ch 116, §12; 2001 Acts, ch 153, §15; 2001 Acts, ch 176, §80
Terminology change applied
NEW unnumbered paragraph 2

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 un-

der 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 eligible electors residing in the city or the unincorporated area equal in number to at least 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.

2001 Acts, ch 56, §34
Subsection 4, paragraph f, unnumbered paragraph 2 amended

CHAPTER 422B

LOCAL OPTION TAXES

Exemption from sales and use tax if federal Sales Tax
Holiday Act is enacted by federal government;
2001 Acts, 2nd Ex, ch 6, §32, 37

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 or in the case of the use of natural gas, natural gas service, electricity, or electric service on the same basis as the state use tax and shall 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 which is consumed for highway use or in watercraft or aircraft if the fuel tax is paid on the transaction and a refund has not or will not be allowed, 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 equipment by the state department of transportation, on the gross receipts from the sale of self-propelled building equipment, pile drivers, motorized scaffolding, or attachments customarily drawn or attached to self-propelled building equipment, pile drivers, and motorized scaffolding, including auxiliary attachments which improve the performance, safety, operation, or efficiency of the equipment and replacement parts and are directly and primarily used by contractors, subcontractors, and builders for new construction, reconstruction, alterations,

expansion, or remodeling of real property or structures, and on the gross receipts from the sale of a lottery ticket or share in a lottery game conducted pursuant to chapter 99E and except the tax shall not be imposed on the gross receipts from the sale or use of natural gas, natural gas service, electricity, or electric service in a city or county where the gross receipts from the sale of natural gas or electric energy are subject to a franchise fee or user fee during the period the franchise or user fee is imposed. 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. However, a person required to collect state retail sales tax under chapter 422, division IV, is not required to collect local sales and services tax on transactions delivered within the area where the local sales and services tax is imposed unless the person has physical presence in that taxing area. 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 or 423.10 shall not be

required by local authorities.

If a local sales and services tax is imposed by a county pursuant to this chapter, a local excise tax at the same rate shall be imposed by the county on the purchase price of natural gas, natural gas service, electricity, or electric service subject to tax under chapter 423 and not exempted from tax by any provision of chapter 423. The local excise tax is applicable only to the use of natural gas, natural gas service, electricity, or electric service within those incorporated and unincorporated areas of the county where it is imposed and, except as otherwise provided in this chapter, shall be collected and administered in the same manner as the local sales and services tax. For purposes of this chapter, “local sales and services tax” shall also include the local excise tax.

2001 Acts, ch 116, §13
Unnumbered paragraph 1 amended

422B.9 Administration.

1. *a.* A local sales and services tax shall be imposed either January 1 or July 1 following the notification of the director of revenue and finance but not sooner than ninety days following the favorable election. However, a jurisdiction which has voted to continue imposition of the tax may impose that tax without repeal of the prior tax.

b. A local sales and services tax shall be repealed only on June 30 or December 31 but not sooner than ninety days following the favorable election if one is held. However, a local sales and services tax shall not be repealed before the tax has been in effect for one year. At least forty days before the imposition or repeal of the tax, a county shall provide notice of the action by certified mail to the director of revenue and finance.

c. If a local sales and services tax has been imposed prior to April 1, 2000, and at the time of the election a date for repeal was specified on the ballot, the local sales and services tax may be repealed on that date, notwithstanding paragraph “*b.*”

2. *a.* The director of revenue and finance shall administer a local sales and services tax as nearly as possible in conjunction with the administration of state gross receipts tax laws. The director shall provide appropriate forms or provide on the regular state tax forms for reporting local sales and services tax liability.

b. The ordinance of a county board of supervisors imposing a local sales and services tax shall adopt by reference the applicable provisions of the appropriate sections of chapter 422, division IV, and chapter 423. All powers and requirements of the director to administer the state gross receipts tax law and use tax law are applicable to the administration of a local sales and services tax law and the local excise tax, including but not limited to, the provisions of section 422.25, subsection 4, sections 422.30, 422.48 to 422.52, 422.54 to 422.58, 422.67, 422.68, 422.69, subsection 1, sections

422.70 to 422.75, 423.6, subsections 2 to 4, and sections 423.11 to 423.18, and 423.21. Local officials shall confer with the director of revenue and finance for assistance in drafting the ordinance imposing a local sales and services tax. A certified copy of the ordinance shall be filed with the director as soon as possible after passage.

c. Frequency of deposits and quarterly reports of a local sales and services tax with the department of revenue and finance are governed by the tax provisions in section 422.52. Local tax collections shall not be included in computation of the total tax to determine frequency of filing under section 422.52.

3. *a.* The director, in consultation with local officials, shall collect and account for a local sales and services tax. The director shall certify each quarter the amount of local sales and services tax receipts and any interest and penalties to be credited to the “local sales and services tax fund” established in the office of the treasurer of state.

b. All local tax moneys and interest and penalties received or refunded one hundred eighty days or more after the date on which the county repeals its local sales and services tax shall be deposited in or withdrawn from the state general fund.

2001 Acts, ch 116, §14
Subsection 1, paragraph a amended

422B.11 Construction contractor refunds.

1. Construction contractors may make application to the department for a refund of the additional local sales and services tax paid under this chapter by reason of 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 the date of the imposition or increase in rate of a local sales and services tax under this chapter. 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 amount of the state and local 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.

2. The department shall pay the refund from the appropriate city’s or county’s account in the local sales and services tax fund.

3. 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 local sales and services tax imposed under this chapter.

2001 Acts, ch 116, §15
Subsection 1, paragraph c amended

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.

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 eligible electors residing within the jurisdiction seeking to issue the bonds in a number equal to at least 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 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.

2001 Acts, ch 56, §35
 Subsection 4, paragraph a, unnumbered paragraph 2 amended

CHAPTER 422E

SCHOOL INFRASTRUCTURE FUNDING

Exemption from sales and use tax if federal Sales Tax
 Holiday Act is enacted by federal government;
 2001 Acts, 2nd Ex, ch 6, §32, 37

422E.2 Imposition by county.

1. *a.* A local sales and services tax shall be imposed by a county only after an election at which a majority of those voting on the question favors imposition. The effective date shall be either January 1 or July 1 but not sooner than ninety days following the favorable election. A local sales and services tax approved by a majority vote shall apply to all incorporated and unincorporated areas of that county.

b. A local sales and services tax shall be repealed on either June 30 or December 31 but not sooner than ninety days following the favorable election, if one is held.

c. If a local sales and services tax has been imposed prior to April 1, 2000, and at the time of the election a date for repeal was specified on the ballot, the local sales and services tax may be repealed on that date, notwithstanding paragraph "b".

2. *a.* Upon receipt by a county board of supervisors of a petition requesting imposition of a local sales and services tax for infrastructure purposes, 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, the board shall within thirty days direct the county commissioner of elections to submit the question of imposition of the tax to the registered voters of the whole county.

b. Alternatively, the question of imposition of a local sales and services tax for school infrastructure purposes may be proposed by motion or mo-

tions, requesting such submission, adopted by the governing body of a school district or school districts located within the county containing a total, or a combined total in the case of more than one school district, of at least one-half of the population of the county, or by the county board of supervisors. Upon adoption of such motion, the governing body of a school district shall notify the board of supervisors of the adoption of the motion. The county board of supervisors shall submit the motion to the county commissioner of elections, who 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.

3. The county commissioner of elections shall submit the question of imposition of a local sales and services tax for school infrastructure purposes 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 rate of tax, the date the tax will be imposed and repealed, and shall contain a statement as to the specific purpose or purposes for which the revenues shall be expended. The dates for the imposition and repeal of the tax shall be as provided in subsection 1. The rate of tax shall not be more than one percent as set by the

county board of supervisors. The state commissioner of elections shall establish by rule the form for the ballot proposition which form shall be uniform throughout the state.

4. *a.* The tax may be repealed or the rate increased, but not above one percent, or decreased after an election at which a majority of those voting on the question of repeal or rate change favored the repeal or rate change. The election at which the question of repeal or rate change is offered shall be called and held in the same manner and under the same conditions as provided in this section for the election on the imposition of the tax. The election may be held at any time but not sooner than sixty days following publication of the ballot proposition. However, the tax shall not be repealed before it has been in effect for one year.

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 the tax, the county auditor shall give written notice of the result of the election by sending a copy of the abstract of the votes from the favorable election to the director of revenue and finance. Election costs shall be apportioned among school districts within the county on a pro rata basis in proportion to the number of registered voters in each school district and the total number of registered voters in all of the school districts within the county.

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 422E.4, 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.

2001 Acts, ch 24, §50

Subsection 4, paragraph b, unnumbered paragraph 1 amended

422E.3 Collection of tax.

1. If a majority of those voting on the question of imposition of a local sales and services tax for school infrastructure purposes favors imposition of the tax, the tax shall be imposed by the county board of supervisors within the county pursuant to section 422E.2, at the rate specified for a ten-year duration on the gross receipts taxed by the state under chapter 422, division IV.

2. The tax shall be imposed on the same basis as the state sales and services tax or in the case of the use of natural gas, natural gas service, electricity, or electric service on the same basis as the state use tax and shall 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 which is consumed for highway use or in watercraft or aircraft if the fuel tax is paid on the transaction and a refund has not or will not be allowed, on the gross receipts from the rental of rooms, apartments, or sleeping quarters which are taxed under chapter 422A dur-

ing the period the hotel and motel tax is imposed, on the gross receipts from the sale of equipment by the state department of transportation, on the gross receipts from the sale of self-propelled building equipment, pile drivers, motorized scaffolding, or attachments customarily drawn or attached to self-propelled building equipment, pile drivers, and motorized scaffolding, including auxiliary attachments which improve the performance, safety, operation, or efficiency of the equipment, and replacement parts and are directly and primarily used by contractors, subcontractors, and builders for new construction, reconstruction, alterations, expansion, or remodeling of real property or structures, and on the gross receipts from the sale of a lottery ticket or share in a lottery game conducted pursuant to chapter 99E and except the tax shall not be imposed on the gross receipts from the sale or use of natural gas, natural gas service, electricity, or electric service in a city or county where the gross receipts from the sale of natural gas or electric energy are subject to a franchise fee or user fee during the period the franchise or user fee is imposed.

3. The tax is applicable to transactions within the county where it is imposed and shall be collected by all persons required to collect state gross receipts or local excise taxes. However, a person required to collect state retail sales tax under chapter 422, division IV, is not required to collect local sales and services tax on transactions delivered within the area where the local sales and services tax is imposed unless the person has physical presence in that taxing area. The amount of the sale, for purposes of determining the amount of the tax, does not include the amount of any state gross receipts or excise taxes or other local option sales or excise taxes. A tax permit other than the state tax permit required under section 422.53 or 423.10 shall not be required by local authorities.

4. The director of revenue and finance shall credit tax receipts and interest and penalties from the local sales and services tax for school infrastructure purposes to an account within the county's local sales and services tax fund, as created in section 422B.10, subsection 1, maintained in the name of the school district or school districts located within the county. 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.

5. *a.* The director of revenue and finance within fifteen days of the beginning of each fiscal year shall send to each school district where the tax is imposed an estimate of the amount of tax moneys each school district will receive for the year and for each month of the year. At the end of each month, the director may revise the estimates for the year and remaining months.

b. The director shall remit ninety-five percent of the estimated tax receipts for the school district

to the school district on or before August 31 of the fiscal year and on or before the last day of each following month.

c. The director shall remit a final payment of the remainder of tax moneys due for the fiscal year before November 10 of the next fiscal year. If an overpayment has resulted during the previous fiscal year, the November payment shall be adjusted to reflect any overpayment.

If more than one school district, or a portion of a school district, is located within the county, tax receipts shall be remitted to each school district or portion of a school district in which the county tax is imposed in a pro rata share based upon the ratio which the percentage of actual enrollment for the school district that attends school in the county bears to the percentage of the total combined actual enrollments for all school districts that attend school in the county. The combined actual enrollment for a county, for purposes of this section, shall be determined for each county imposing a sales and services tax for school infrastructure purposes by the department of management based on the actual enrollment figures reported by October 1 to the department of management by the de-

partment of education pursuant to section 257.6, subsection 1. The combined actual enrollment count shall be forwarded to the director of the department of management by March 1, annually, for purposes of supplying estimated tax payment figures and making estimated tax payments pursuant to this section for the following fiscal year.

6. The local sales and services tax for school infrastructure purposes shall be administered as provided in section 422B.9.

7. Construction contractors may make application to the department for a refund of the additional local sales and services tax paid under this chapter by reason of taxes paid on goods, wares, or merchandise under the conditions specified in section 422B.11. The refund shall be paid by the department from the appropriate school district's account in the local sales and services tax fund. The penalty provisions contained in section 422B.11, subsection 3, shall apply regarding an erroneous application for refund of local sales and services tax paid under this chapter.

2001 Acts, ch 116, §16
Subsection 2 amended

CHAPTER 423

USE TAX

Exemption from sales and use tax if federal Sales Tax
Holiday Act is enacted by federal government;
2001 Acts, 2nd Ex, ch 6, §32, 37

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 or for manufactured housing under chapter 321.

2. *"Department"* and *"director"* shall have the same meaning as defined in section 422.3.

3. *"Installed purchase price"* is the amount charged, valued in money whether paid in money or otherwise, by a building contractor to convert manufactured housing from tangible personal property into realty. *"Installed purchase price"* includes, but is not limited to, amounts charged for installing a foundation and electrical and plumbing hookups. *"Installed purchase price"* excludes any amount charged for landscaping in connection with the conversion.

4. *"Manufactured housing"** means the same as defined in section 321.1.

5. *"Mobile home"** means mobile home as defined in section 321.1, subsection 36C, paragraph "a".

6. *"Person"* and *"taxpayer"* shall have the same meaning as defined in section 422.42.

7. *"Purchase"* means any transfer, exchange,

or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration.

8. *"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.

9. “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.

10. “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, tangible personal property leased to a lessee of the retailer, an office, distribution house, sales house, warehouse, or other place of business, or any representative operating within this state under the authority of the retailer or its subsidiary, irrespective of whether that place of business or representative is located here permanently or temporarily, or whether the retailer or subsidiary is admitted to do business within this state pursuant to chapter 490.

11. “Street railways” shall mean and include urban transportation systems.

12. “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, water, and communication service when furnished or delivered to consumers or users within this state.

13. “Tangible personal property” does not include the substance of a transaction that is delivered to the purchaser digitally, electronically, or utilizing cable, or by radio waves, microwaves, satellites, or fiber optics.

This subsection is repealed December 31, 2002.

14. “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.

15. “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 any of the following:

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.

b. Fuel which is consumed in creating power, heat, or steam for processing or for generating electric current.

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. A retailer’s or building contractor’s sale of manufactured housing* for use in this state, whether in the form of tangible personal property or of realty, is a use of that property for the purposes of this chapter.

16. “Vehicles subject to registration” means any vehicle subject to registration pursuant to section 321.18.

17. 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.

2001 Acts, ch 150, §5, 6

*Definitions of “manufactured housing” and “mobile home” changed to “manufactured home” and “manufactured or mobile home” in 2001 Acts, ch 153, §15, 17; 2001 Acts, ch 176, §80

Subsections 10 and 12 amended

423.4 Exemptions.

The use in this state of the following tangible personal property is hereby specifically exempted from the tax imposed by this chapter:

1. Tangible personal property and enumerated services, the gross receipts from the sale of which are required to be included in the measure of the tax imposed by division IV of chapter 422, if that tax has been paid to the department or paid to the retailer. This exemption does not include vehicles subject to registration or subject only to the issuance of a certificate of title.

2. All articles of tangible personal property brought into the state of Iowa by a nonresident in-

dividual thereof for the individual's use or enjoyment while within the state.

3. Services exempt from taxation by provisions of section 422.45.

4. The gross receipts from the sale or rental of tangible personal property or from the rendering, furnishing, or performing of services which are exempted from the retail sales tax by the terms of section 422.45, except subsection 4 and subsection 6 of section 422.45 as it relates to the sale of vehicles subject to registration or subject only to the issuance of a certificate of title and as it relates to aircraft subject to registration under section 328.20.

5. Advertisement and promotional material and matter, seed catalogs, envelopes for same, and other similar material temporarily stored in this state which are acquired outside of Iowa and which, subsequent to being brought into this state, are sent outside of Iowa, either singly or physically attached to other tangible personal property sent outside of Iowa.

6. Tangible personal property used or to be used as railroad rolling stock for transporting persons or property, or as materials or parts therefor.

7. Vehicles, as defined in section 321.1, subsections 41, 64A, 71, 85, and 88, except such vehicles subject to registration which are designed primarily for carrying persons, when purchased for lease and actually leased to a lessee for use outside the state of Iowa and the subsequent sole use in Iowa is in interstate commerce or interstate transportation. This subsection shall be retroactive to January 1, 1973.

8. Tangible personal property which, by means of fabrication, compounding, or manufacturing, become an integral part of vehicles, as defined in section 321.1, subsections 41, 64A, 71, 85, and 88, manufactured for lease and actually leased to a lessee for use outside the state of Iowa and the subsequent sole use in Iowa is in interstate commerce or interstate transportation. Vehicles subject to registration which are designed primarily for carrying persons are excluded from this subsection. This subsection shall be retroactive to January 1, 1973.

9. Vehicles subject to registration which are transferred from a business or individual conducting a business within this state as a sole proprietorship, partnership, or limited liability company to a corporation formed by the sole proprietorship, partnership, or limited liability company for the purpose of continuing the business when all of the stock of the corporation so formed is owned by the sole proprietor and the sole proprietor's spouse, by all the partners in the case of a partnership, or by all of the members in the case of a limited liability company. This exemption is equally available where the vehicles subject to registration are transferred from a corporation to a sole proprietorship, partnership, or limited liability company formed by that corporation for the purpose of con-

tinuing the business when all of the incidents of ownership are owned by the same person or persons who were stockholders of the corporation.

This exemption also applies where the vehicles subject to registration are transferred from a corporation as part of the liquidation of the corporation to its stockholders if within three months of such transfer the stockholders retransfer those vehicles subject to registration to a sole proprietorship, partnership, or limited liability company for the purpose of continuing the business of the corporation when all of the incidents of ownership are owned by the same person or persons who were stockholders of the corporation.

10. Vehicles registered or operated under chapter 326 and used substantially in interstate commerce, section 423.5 notwithstanding. For purposes of this subsection, "*substantially in interstate commerce*" means that a minimum of twenty-five percent of the miles operated by the vehicle accrues in states other than Iowa. This subsection applies only to vehicles which are registered for a gross weight of thirteen tons or more.

For purposes of this subsection, trailers and semitrailers registered or operated under chapter 326 are deemed to be used substantially in interstate commerce and to be registered for a gross weight of thirteen tons or more.

For the purposes of this subsection, if a vehicle meets the requirement that twenty-five percent of the miles operated accrues in states other than Iowa in each year of the first four-year period of operation, the exemption from use tax shall continue until the vehicle is sold or transferred. If the vehicle is found to have not met the exemption requirements or the exemption was revoked, the value of the vehicle upon which the use tax shall be imposed is the book or market value, whichever is less, at the time the exemption requirements were not met or the exemption was revoked.

11. Mobile homes and manufactured homes the use of which has previously been subject to the tax imposed under this chapter and for which that tax has been paid.

12. Mobile homes to the extent of the portion of the purchase price of the mobile home which is not attributable to the cost of the tangible personal property used in the processing of the mobile home and manufactured home to the extent of the purchase price or the installed purchase price of the manufactured home which is not attributable to the cost of the tangible personal property used in the processing of the manufactured 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 mobile home is forty percent and the portion of the purchase price or installed purchase price which is not attributable to the cost of the tangible personal property used in the processing of the manufactured home is forty percent.

13. Tangible personal property used or to be

used as a ship, barge, or waterborne vessel which is used or to be used primarily in or for the transportation of property or cargo for hire on the rivers bordering the state or as materials or parts of such ship, barge, or waterborne vessel.

14. Vehicles subject to registration in any state when purchased for rental or registered and titled by a motor vehicle dealer licensed pursuant to chapter 322 for rental use, and held for rental for a period of one hundred twenty days or more and actually rented for periods of sixty days or less by a person regularly engaged in the business of renting vehicles including, but not limited to, motor vehicle dealers licensed pursuant to chapter 322 who rent automobiles to users, if the rental of the vehicles is subject to taxation under chapter 422C.

15. Motor vehicles subject to registration which were registered and titled between July 1, 1982, and July 1, 1992, to a motor vehicle dealer licensed under chapter 322 and which were rented to a user as defined in section 422C.2 if the following occurred:

a. The dealer kept the vehicle on the inventory of vehicles for sale at all times.

b. The vehicle was to be immediately taken from the user of the vehicle when a buyer was found.

c. The user was aware of this situation.

16. Vehicles subject to registration under chapter 321, with a gross vehicle weight rating of less than sixteen thousand pounds, excluding motorcycles and motorized bicycles, when purchased for lease and titled by the lessor licensed pursuant to chapter 321F and actually leased for a period of twelve months or more if the lease of the vehicle is subject to taxation under section 423.7A.

A lessor may maintain the exemption from use tax under this subsection for a qualifying lease that terminates at the conclusion or prior to the contracted expiration date, if the lessor does not use the vehicle for any purpose other than for lease. Once the vehicle is used by the lessor for a purpose other than for lease, the exemption from use tax under this subsection no longer applies and, unless there is an exemption from the use tax, use tax is due on the fair market value of the vehicle determined at the time the lessor uses the vehicle for a purpose other than for lease, payable to the department. If the lessor holds the vehicle exclusively for sale, use tax is due and payable on the

purchase price of the vehicle at the time of purchase pursuant to this chapter.

17. Aircraft for use in a scheduled interstate federal aviation administration certificated air carrier operation.

18. Aircraft; 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 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 certificated air carrier operation.

19. 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 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 non-scheduled interstate federal aviation administration certificated air carrier operation operating under 14 C.F.R. ch. 1, pt. 135.

20. Aircraft sold to an aircraft dealer who in turn rents or leases the aircraft if all of the following apply:

a. The aircraft is kept in the inventory of the dealer for sale at all times.

b. The dealer reserves the right to immediately take the aircraft from the renter or lessee when a buyer is found.

c. The renter or lessee is aware that the dealer will immediately take the aircraft when a buyer is found.

If an aircraft exempt under this subsection is used for any purpose other than leasing or renting, or the conditions in paragraphs "a", "b", and "c" are not continuously met, the dealer 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.

2001 Acts, ch 116, §17; 2001 Acts, ch 150, §7; 2001 Acts, ch 153, §17
Terminology change applied
Subsection 4 amended
Subsection 9 amended

CHAPTER 424

ENVIRONMENTAL PROTECTION CHARGE ON PETROLEUM DIMINUTION

424.10 Failure to file return — incorrect return.

1. As soon as practicable after a return is filed

and in any event within three years after the return is filed the department shall examine it, assess and determine the charge due if the return is

found to be incorrect, and give notice to the depositor of the assessment and determination as provided in subsection 2. The period for the examination and determination of the correct amount of the charge is unlimited in the case of a false or fraudulent return made with the intent to evade the charge or in the case of a failure to file a return. If the determination that a return is incorrect is the result of an audit of the books and records of the depositor, the charge, or additional charge, if any is found due, shall be assessed and determined and the notice to the depositor shall be given by the department within one year after the completion of the examination of the books and records.

2. If a return required by this chapter is not filed, or if a return when filed is incorrect or insufficient and the maker fails to file a corrected or sufficient return within twenty days after the return is required by notice from the department, the department shall determine the amount of charge due from information as the department may be able to obtain and, if necessary, may estimate the charge on the basis of external indices or factors. The department shall give notice of the determination to the person liable for the charge. The determination shall fix the charge unless the person against whom it is assessed shall, within sixty days after the date of the notice of the determination, apply to the director for a hearing or unless the person against whom it is assessed contests the determination by paying the charge, interest, and penalty and timely filing a claim for refund. At the hearing evidence may be offered to support the determination or to prove that it is incorrect. After the hearing the director shall give notice of the decision to the person liable for the charge.

If a depositor's, receiver's, or other person's challenge relates to the diminution rate, the burden of proof upon the challenger shall only be satisfied by clear and convincing evidence.

3. If the amount paid is greater than the correct charge, penalty, and interest due, the department shall refund the excess, with interest after sixty days from the date of payment at the rate in effect under section 421.7, pursuant to rules prescribed by the director. However, the director shall not allow a claim for refund that has not been filed with the department within three years after the charge payment upon which a refund is claimed became due, or one year after the charge payment was made, whichever time is later. A determination by the department of the amount of charge, penalty, and interest due, or the amount of refund for any excess amount paid, is final unless the person aggrieved by the determination appeals to the director for a revision of the determination within sixty days from the date of the notice of determination of charge, penalty, and interest due or refund owing. The director shall grant a hearing, and upon hearing the director shall determine the correct charge, penalty, and interest

due or refund owing, and notify the appellant of the decision by mail. The decision of the director is final unless the appellant seeks judicial review of the director's decision under section 424.13.

2001 Acts, ch 116, §18; 2001 Acts, ch 150, §8
Section amended

424.12 Records required.

It is the duty of every depositor required to make a report and pay any charge under this chapter, to preserve such records as the director may require, and it is the duty of every depositor to preserve for a period of three years all invoices and other records; and all such books, invoices, and other records shall be open to examination at any time by the department, and shall be made available within this state for examination upon reasonable notice when the director shall so order. When requested to do so by any person from whom a charge payer is seeking credit, or with whom the charge payer is negotiating the sale of any personal property, or by any other person having a legitimate interest in such information, the director, upon being satisfied that such a situation exists, shall inform that person as to the amount of unpaid charges due by the charge payer under this chapter. The giving of information under such circumstances shall not be deemed a violation of section 422.72 as applied to this chapter.

Section 422.72 applies to this chapter as if the environmental protection charge were a tax.

2001 Acts, ch 150, §9
Section 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 charge 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 the charge 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.

2001 Acts, ch 116, §19
Subsection 2 amended

424.15 Environmental protection charge refund.

If it appears that, as a result of mistake, an amount of a charge, penalty, or interest has been paid which was not due under this chapter, then that amount shall be refunded to the charge payer by the department. A claim for refund that has not been filed with the department within three years after the charge payment upon which a refund is claimed became due, or one year after that charge payment was made, whichever time is the later, shall not be allowed by the director.

Refunds may be made only from the unallocated or uncommitted moneys in the road use tax fund, and are limited by the total amount budgeted by

the board for charge refunds.

2001 Acts, ch 150, §10
Unnumbered paragraph 1 amended

CHAPTER 425

HOMESTEAD TAX CREDITS AND REIMBURSEMENT

425.7 Appeals permitted — disallowed claims and penalty.

1. Any person whose claim is denied under the provisions of this chapter may appeal from the action of the board of supervisors to the district court of the county in which said claimed homestead is situated by giving written notice of such appeal to the county auditor of said county within twenty days from the date of mailing of notice of such action by the board of supervisors.

2. In the event any claim under this chapter is allowed, any owner of an eligible homestead may appeal from the action of the board of supervisors to the district court of the county in which said claimed homestead is situated, by giving written notice of such appeal to the county auditor of said county and such notice to the owner of said claimed homestead as a judge of the district court shall direct.

3. If the director of revenue and finance determines that a claim for homestead credit has been allowed by the board of supervisors which is not justifiable under the law and not substantiated by proper facts, the director may, at any time within thirty-six months from July 1 of the year in which the claim is allowed, set aside the allowance. Notice of the disallowance shall be given to the county auditor of the county in which the claim has been improperly granted and a written notice of the disallowance shall also be addressed to the claimant at the claimant's last known address. The claimant or board of supervisors may appeal to the state board of tax review pursuant to section 421.1, subsection 4. The claimant or the board of supervisors may seek judicial review of the action of the state board of tax review in accordance with chapter 17A.

If a claim is disallowed by the director of revenue and finance and not appealed to the state board of tax review or appealed to and upheld by the state board of tax review and a petition for judicial review is not filed with respect to the disallowance, any amounts of credits allowed and paid from the homestead credit fund including the penalty, if any, become a lien upon the property on which credit was originally granted, if still in the hands of the claimant, and not in the hands of a bona fide purchaser, and any amount so erroneously paid including the penalty, if any, shall be collected by the county treasurer in the same manner as other taxes and the collections shall be returned to the department of revenue and finance

and credited to the homestead credit fund. The director of revenue and finance may institute legal proceedings against a homestead credit claimant for the collection of payments made on disallowed credits and the penalty, if any. If a person makes a false claim or affidavit with fraudulent intent to obtain the homestead credit, the person is guilty of a fraudulent practice and the claim shall be disallowed in full. If the credit has been paid, the amount of the credit plus a penalty equal to twenty-five percent of the amount of credit plus interest, at the rate in effect under section 421.7, from the time of payment shall be collected by the county treasurer in the same manner as other property taxes, penalty, and interest are collected and when collected shall be paid to the director of revenue and finance. If a homestead credit is disallowed and the claimant failed to give written notice to the assessor as required by section 425.2 when the property ceased to be used as a homestead by the claimant, a civil penalty equal to five percent of the amount of the disallowed credit is assessed against the claimant.

2001 Acts, ch 154, §1, 6
Fraudulent practices; §714.8 – 714.14
2001 amendment to subsection 3 applies to homestead tax credit claims filed or on file on or after July 1, 2001; 2001 Acts, ch 154, §6
Subsection 3, unnumbered paragraph 2 amended

425.14 False affidavits. Repealed by 2001 Acts, ch 154, § 5, 6. See § 425.7.

2001 repeal applies to homestead tax credit claims filed or on file on or after July 1, 2001; 2001 Acts, ch 154, §6

425.17 Definitions.

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

1. *“Base year”* means the calendar year last ending before the claim is filed.

2. *“Claimant”* means either of the following:

a. A person filing a claim for credit or reimbursement under this division who has attained the age of sixty-five years on or before December 31 of the base year or who is totally disabled and was totally disabled on or before December 31 of the base year and is domiciled in this state at the time the claim is filed or at the time of the person's death in the case of a claim filed by the executor or administrator of the claimant's estate.

b. A person filing a claim for credit or reimbursement under this division who has attained the age of twenty-three years on or before December 31 of the base year or was a head of household on December 31 of the base year, as defined in the

Internal Revenue Code, but has not attained the age or disability status described in paragraph “a”, and is domiciled in this state at the time the claim is filed or at the time of the person’s death in the case of a claim filed by the executor or administrator of the claimant’s estate, and was not claimed as a dependent on any other person’s tax return for the base year.

“Claimant” under paragraph “a” or “b” includes a vendee in possession under a contract for deed and may include one or more joint tenants or tenants in common. In the case of a claim for rent constituting property taxes paid, the claimant shall have rented the property during any part of the base year. In the case of a claim for property taxes due, the claimant shall have occupied the property during any part of the fiscal year beginning July 1 of the base year. If a homestead is occupied by two or more persons, and more than one person is able to qualify as a claimant, the persons may each file a claim based upon each person’s income and rent constituting property taxes paid or property taxes due.

3. “Gross rent” means rental paid at arm’s length for the right of occupancy of a homestead or manufactured or mobile home, including rent for space occupied by a manufactured or mobile home not to exceed one acre. If the director of revenue and finance determines that the landlord and tenant have not dealt with each other at arm’s length, and the director of revenue and finance is satisfied that the gross rent charged was excessive, the director shall adjust the gross rent to a reasonable amount as determined by the director.

4. “Homestead” means the dwelling owned or rented and actually used as a home by the claimant during the period specified in subsection 2, and so much of the land surrounding it including one or more contiguous lots or tracts of land, as is reasonably necessary for use of the dwelling as a home, and may consist of a part of a multidwelling or multipurpose building and a part of the land upon which it is built. It does not include personal property except that a manufactured or mobile home may be a homestead. Any dwelling or a part of a multidwelling or multipurpose building which is exempt from taxation does not qualify as a homestead under this division. However, solely for purposes of claimants living in a property and receiving reimbursement for rent constituting property taxes paid immediately before the property becomes tax exempt, and continuing to live in it after it becomes tax exempt, the property shall continue to be classified as a homestead. A homestead must be located in this state. When a person is confined in a nursing home, extended-care facility, or hospital, the person shall be considered as occupying or living in the person’s homestead if the person is the owner of the homestead and the person maintains the homestead and does not lease, rent, or otherwise receive profits from other persons for the use of the homestead.

5. “Household” means a claimant and the claimant’s spouse if living with the claimant at any time during the base year. “Living with” refers to domicile and does not include a temporary visit.

6. “Household income” means all income of the claimant and the claimant’s spouse in a household and actual monetary contributions received from any other person living with the claimant during their respective twelve-month income tax accounting periods ending with or during the base year.

7. “Income” means the sum of Iowa net income as defined in section 422.7, plus all of the following to the extent not already included in Iowa net income: capital gains, alimony, child support money, cash public assistance and relief, except property tax relief granted under this division, amount of in-kind assistance for housing expenses, the gross amount of any pension or annuity, including but not limited to railroad retirement benefits, payments received under the federal Social Security Act, except child insurance benefits received by a member of the claimant’s household, and all military retirement and veterans’ disability pensions, interest received from the state or federal government or any of its instrumentalities, workers’ compensation and the gross amount of disability income or “loss of time” insurance. “Income” does not include gifts from nongovernmental sources, or surplus foods or other relief in kind supplied by a governmental agency. In determining income, net operating losses and net capital losses shall not be considered.

8. “Property taxes due” means property taxes including any special assessments, but exclusive of delinquent interest and charges for services, due on a claimant’s homestead in this state, but includes only property taxes for which the claimant is liable and which will actually be paid by the claimant. However, if the claimant is a person whose property taxes have been suspended under sections 427.8 and 427.9, “property taxes due” means property taxes including any special assessments, but exclusive of delinquent interest and charges for services, due on a claimant’s homestead in this state, but includes only property taxes for which the claimant is liable and which would have to be paid by the claimant if the payment of the taxes has not been suspended pursuant to sections 427.8 and 427.9. “Property taxes due” shall be computed with no deduction for any credit under this division or for any homestead credit allowed under section 425.1. Each claim shall be based upon the taxes due during the fiscal year next following the base year. If a homestead is owned by two or more persons as joint tenants or tenants in common, and one or more persons are not members of claimant’s household, “property taxes due” is that part of property taxes due on the homestead which equals the ownership percentage of the claimant and the claimant’s household. The county treasurer shall include with the tax receipt a statement that if the owner of the property

is eighteen years of age or over, the person may be eligible for the credit allowed under this division. If a homestead is an integral part of a farm, the claimant may use the total property taxes due for the larger unit. If a homestead is an integral part of a multidwelling or multipurpose building the property taxes due for the purpose of this subsection shall be prorated to reflect the portion which the value of the property that the household occupies as its homestead is to the value of the entire structure. For purposes of this subsection, “unit” refers to that parcel of property covered by a single tax statement of which the homestead is a part.

9. “*Rent constituting property taxes paid*” means twenty-three percent of the gross rent actually paid in cash or its equivalent during the base year by the claimant or the claimant’s household solely for the right of occupancy of their homestead in the base year, and which rent constitutes the basis, in the succeeding year, of a claim for reimbursement under this division by the claimant.

10. “*Special assessment*” means an unpaid special assessment certified pursuant to chapter 384, division IV. The claimant may include as a portion of the taxes due during the fiscal year next following the base year an amount equal to the un-

paid special assessment installment due, plus interest, during the fiscal year next following the base year.

11. “*Totally disabled*” means the inability to engage in any substantial gainful employment by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or is reasonably expected to last for a continuous period of not less than twelve months.

2001 Acts, ch 153, §15; 2001 Acts, ch 176, §80
Terminology change applied

425.21 Satisfaction of outstanding tax liabilities.

The amount of any claim for credit or reimbursement payable under this division may be applied by the department of revenue and finance against any tax liability, delinquent accounts, charges, loans, fees, or other indebtedness due the state or state agency that has a formal agreement with the department for central debt collection, outstanding on the books of the department against the claimant, or against a spouse who was a member of the claimant’s household in the base year.

2001 Acts, ch 24, §51
Section amended

CHAPTER 425A

FAMILY FARM TAX CREDIT

425A.4 Claim for credit.

1. To apply for the credit, the person shall deliver to the county assessor a verified statement and designation of the tracts of agricultural land for which the credit is claimed. The assessor shall return the statement and designation on or before November 15 of each year to the county board of supervisors with a recommendation for allowance or disallowance. A claim for credit filed after November 1 of the year shall be considered as a claim filed for the following year.

2. The county board of supervisors in each county shall examine all claims delivered to county assessors, and shall either allow or disallow the claims, and if disallowed shall send notice of disallowance by regular mail to the claimant at the claimant’s last known address. The claimant may appeal the decision of the board to the district court in which the tract for which the credit is claimed is situated by giving written notice of the appeal to the county board of supervisors within twenty days from the date of the mailing of the notice of the decision of the board of supervisors.

3. Upon the filing and allowance of the claim, the claim shall be allowed on that tract for successive years without further filing as long as the property is legally or equitably owned by that person or that person’s spouse on July 1 of each of

those successive years, and the designated person who is actively engaged in farming remains the same during these years. When the property is sold or transferred, the buyer or transferee who wishes to qualify shall file for the credit. However, when the property is transferred as part of a distribution made pursuant to chapter 598, the transferee who is the spouse retaining ownership of the property is not required to file for the credit. In the case where the owner remains the same but the person who is actively engaged in farming changes, the owner shall refile for the credit. The owner shall provide written notice if the person actively engaged in farming changes.

4. The assessor shall retain a permanent file of current family farm credit claims filed in the assessor’s office.

The county recorder shall give notice to the assessor of each transfer of title filed in the recorder’s office. The notice shall describe the tract of agricultural land transferred, the name of the person transferring the title to the tract, and the name of the person to whom title to the tract has been transferred.

2001 Acts, ch 154, §2, 3, 6
2001 amendments apply to family farm tax credit claims filed on or after July 1, 2001; 2001 Acts, ch 154, §6
Subsection 1 amended
NEW subsections 3 and 4

425A.5 Computation by county auditor.

The family farm tax credit allowed each year shall be computed as follows: On or before April 1, the county auditor shall list by school districts all tracts of agricultural land which are entitled to credit, the taxable value for the previous year, the budget from each school district for the previous year, and the tax rate determined for the general fund of the school district in the manner prescribed in section 444.3 for the previous year, and if the tax rate is in excess of five dollars and forty cents per thousand dollars of assessed value, the auditor shall multiply the tax levy which is in excess of five dollars and forty cents per thousand dollars of assessed value by the total taxable value of the agricultural land entitled to credit in the school district, and on or before April 1, certify the total amount of credit and the total number of acres entitled to the credit to the department of revenue and finance.

2001 Acts, ch 143, §2
Section amended

425A.8 False claim — penalty.

A person making a false claim or affidavit with

fraudulent intent to obtain the credit under section 425A.3, is guilty of a fraudulent practice and the claim shall be disallowed in full. If the credit has been paid, the amount of the credit plus a penalty equal to twenty-five percent of the amount of credit plus interest, at the rate in effect under section 421.7, from the time of payment shall be collected by the county treasurer in the same manner as other property taxes, penalty, and interest are collected and when collected shall be paid to the director of revenue and finance.

A person who fails to notify the assessor of a change in the person who is actively engaged in farming the tract for which the credit under section 425A.3 is allowed shall be liable for the amount of the credit plus a penalty equal to five percent of the amount of the credit. The amounts shall be collected by the county treasurer in the same manner as other property taxes and any penalty are collected and when collected shall be paid to the director of revenue and finance.

2001 Acts, ch 154, §4, 6
Fraudulent practices; §714.8 – 714.14
2001 amendment applies to family farm tax credit claims filed on or after July 1, 2001; 2001 Acts, ch 154, §6
NEW unnumbered paragraph 2

CHAPTER 426**AGRICULTURAL LAND TAX CREDIT****426.6 Computation by auditor — appeal.**

The agricultural land tax credit allowed each year shall be computed as follows: On or before April 1, the county auditor shall list by school districts all tracts of agricultural lands which they are entitled to credit, together with the taxable value for the previous year, together with the budget from each school district for the previous year, and the tax rate determined for the general fund of the district in the manner prescribed in section 444.3 for the previous year, and if such tax rate is in excess of five dollars and forty cents per thousand dollars of assessed value, the auditor shall multiply the tax levy which is in excess of five dollars and forty cents per thousand dollars of assessed value by the total taxable value of the agricultural lands entitled to credit in the district, and on or before April 1, certify the amount to the department of revenue and finance.

In the event the county auditor denies a credit upon any such lands, the auditor shall immediately mail to the owner at the owner's last known address notice of the decision thereon. The owner may, within thirty days thereafter, appeal to the board of supervisors of the county wherein the land involved is situated by serving notice of said appeal upon the chairperson of said board. The board shall hear such appeal promptly and shall determine anew all questions involved in said appeal and shall within ten days after such hearing, mail to the owner at the owner's last known ad-

dress, notice of its decision. In the event of disallowance the owner may, within ten days from the date such notice is mailed, appeal such disallowance by the board of supervisors to the district court of that county by serving written notice of appeal on the county auditor. The appeal shall be tried de novo and may be heard in term time or vacation. The decision of the district court thereon shall be final.

2001 Acts, ch 143, §3
Unnumbered paragraph 1 amended

426.7 Warrants drawn by director.

After receiving from the county auditors the certifications provided for in section 426.6, and during the following fiscal year, the director of revenue and finance shall draw warrants on the agricultural land credit fund created in section 426.1, payable to the county treasurers in the amount certified by the county auditors of the respective counties and mail the warrants to the county auditors on July 15 of each year taking into consideration the relative budget and cash position of the state resources. However, if the agricultural land credit fund is insufficient to pay in full the total of the amounts certified to the director of revenue and finance, the director shall prorate the fund to the county treasurers and notify the county auditors of the pro rata percentage on or before June 15.

2001 Acts, ch 143, §4
Section amended

CHAPTER 426A

MILITARY SERVICE TAX CREDIT AND EXEMPTIONS

426A.11 Military service — exemptions.

The following exemptions from taxation shall be allowed:

1. The property, not to exceed two thousand seven hundred seventy-eight dollars in taxable value of any veteran, as defined in section 35.1, of the First World War.
2. The property, not to exceed one thousand eight hundred fifty-two dollars in taxable value of an honorably separated, retired, furloughed to a reserve, placed on inactive status, or discharged

veteran, as defined in section 35.1.

3. Where the word “*veteran*” appears in this chapter, it includes, without limitation, the members of the United States air force and the United States merchant marine.

4. For the purpose of determining a military tax exemption under this section, property includes a manufactured or mobile home as defined in section 435.1.

2001 Acts, ch 153, §15; 2001 Acts, ch 176, §80
Terminology change applied

CHAPTER 426B

PROPERTY TAX RELIEF — MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES SERVICES

426B.2 Property tax relief fund distributions.

1. The moneys in the property tax relief fund available to counties for a fiscal year shall be distributed as provided in this section. 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.

Moneys provided to a county for property tax relief in a fiscal year in accordance with this subsection shall not be less than the amount provided for property tax relief in the previous fiscal year.

2. The distributions under subsection 1 shall continue to be made until the combined amount of the distributions made under subsection 1 are equal to fifty percent of the total of all counties' base year expenditures as defined in section 331.438.

3. The director of human services shall draw warrants on the property tax relief fund, payable to the county treasurer in the amount due to a county in accordance with subsection 1 and mail the warrants to the county auditors in July and January of each year.

4. As used in this chapter, and in sections 331.438 and 331.439, “*population*” means the latest applicable population estimate issued by the federal government.

2001 Acts, ch 191, §44
Subsection 3 amended

426B.5 Funding pools.

1. *Per capita expenditure target pool.*

a. A per capita expenditure target pool is created in the property tax relief fund. The pool shall consist of the moneys credited to the pool by law.

b. A statewide per capita expenditure target amount is established. The statewide per capita expenditure target amount shall be equal to the one-hundredth percentile of all county per capita expenditures in the fiscal year beginning July 1, 1997, and ending June 30, 1998.

c. Moneys available in the per capita expenditure pool for a fiscal year shall be distributed to those counties who meet all of the following eligibility requirements:

(1) The county is levying the maximum amount allowed for the county's mental health, mental retardation, and developmental disabilities services fund under section 331.424A.

(2) The county's per capita expenditure in the latest fiscal year for which the actual expenditure information is available is equal to or less than the statewide per capita expenditure target amount.

(3) In the fiscal year that commenced two years prior to the fiscal year of distribution, the county's mental health, mental retardation, and developmental disabilities services fund ending balance under generally accepted accounting principles was equal to or less than twenty-five percent of the county's actual gross expenditures for the fiscal year that commenced two years prior to the fiscal year of distribution.

(4) The county is in compliance with the filing date requirements under section 331.403.

d. The distribution amount a county receives from the moneys available in the pool shall be determined based upon the county's proportion of

the general population of the counties eligible to receive moneys from the pool for that fiscal year. However, a county shall not receive moneys in excess of the amount which would cause the county's per capita expenditure to exceed the statewide per capita expenditure target. Moneys credited to the per capita expenditure target pool which remain unobligated or unexpended at the close of a fiscal year shall remain in the pool for distribution in the succeeding fiscal year.

e. The department of human services shall annually calculate the amount of moneys due to eligible counties in accordance with this subsection. The department shall authorize the issuance of warrants payable to the county treasurer for the amounts due and the warrants shall be issued in January.

2. *Risk pool.*

a. For the purposes of this subsection, unless the context otherwise requires:

(1) "*Net expenditure amount*" means a county's gross expenditures from the services fund for a fiscal year as adjusted by subtracting all services fund revenues for that fiscal year that are received from a source other than property taxes, as calculated on a modified accrual basis.

(2) "*Services fund*" means a county's mental health, mental retardation, and developmental disabilities services fund created in section 331.424A.

b. A risk pool is created in the property tax relief fund. The pool shall consist of the moneys credited to the pool by law.

c. A risk pool board is created. The board shall consist of two county supervisors, two county auditors, a member of the state-county management committee created in section 331.438 who was not appointed by the Iowa state association of counties, a member of the county finance committee created in chapter 333A who is not an elected official, and two single entry point process administrators, all appointed by the governor, and one member appointed by the director of human services. All members appointed by the governor shall be subject to confirmation by the senate. Members shall serve for three-year terms. A vacancy shall be filled in the same manner as the original appointment. Expenses and other costs of the risk pool board members representing counties shall be paid by the county of origin. Expenses and other costs of risk pool board members who do not represent counties shall be paid from a source determined by the governor. Staff assistance to the board shall be provided by the department of human services and counties. Actuarial expenses and other direct administrative costs shall be charged to the pool.

d. (1) A county must apply to the board for assistance from the risk pool on or before April 1 to cover an unanticipated net expenditure amount in excess of the county's current fiscal year budgeted net expenditure amount for the county's services

fund. For purposes of applying for risk pool assistance and for repaying unused risk pool assistance, the current fiscal year budgeted net expenditure amount shall be deemed to be the higher of either the budgeted net expenditure amount in the management plan approved under section 331.439 for the fiscal year in which the application is made or the prior fiscal year's net expenditure amount.

(2) Basic eligibility for risk pool assistance shall require a projected net expenditure amount in excess of the sum of one hundred five percent of the county's current fiscal year budgeted net expenditure amount and any amount of the county's prior fiscal year ending fund balance in excess of twenty-five percent of the county's gross expenditures from the services fund in the prior fiscal year. However, if a county's services fund ending balance in the previous fiscal year was less than ten percent of the amount of the county's gross expenditures from the services fund for that fiscal year and the county has a projected net expenditure amount for the current fiscal year that is in excess of one hundred one percent of the budgeted net expenditure amount for the current fiscal year, the county shall be considered to have met the basic eligibility requirement and is qualified for risk pool assistance.

(3) The board shall review the fiscal year-end financial records for all counties that are granted risk pool assistance. If the board determines a county's actual need for risk pool assistance was less than the amount of risk pool assistance granted to the county, the county shall refund the difference between the amount of assistance granted and the actual need. The county shall submit the refund within thirty days of receiving notice from the board. Refunds shall be credited to the risk pool.

(4) A county receiving risk pool assistance in a fiscal year in which the county did not levy the maximum amount allowed for the county's services fund under section 331.424A shall be required to repay the risk pool assistance during the two succeeding fiscal years. The repayment amount shall be limited to the amount by which the actual amount levied was less than the maximum amount allowed, with at least fifty percent due in the first succeeding fiscal year and the remainder due in the second succeeding fiscal year.

(5) The board shall determine application requirements to ensure prudent use of risk pool assistance. The board may accept or reject an application for assistance in whole or in part. The decision of the board is final.

(6) The total amount of risk pool assistance shall be limited to the amount available in the risk pool for a fiscal year. If the total amount of eligible assistance exceeds the amount available in the risk pool the amount of assistance paid shall be prorated among the counties eligible for assistance. Moneys remaining unexpended or unobli-

gated in the risk pool at the close of a fiscal year shall remain available for distribution in the succeeding fiscal year.

e. A county may apply for preapproval for risk pool assistance based upon an individual who has an unanticipated disability condition with an exceptional cost and the individual is either new to the county's service system or the individual's unanticipated disability condition is new to the individual.

f. The department of human services shall annually calculate the amount of moneys due to eligible counties in accordance with the board's decisions. The department shall authorize the issuance of warrants payable to the county treasurer for the amounts due and the warrants shall be issued before the close of the fiscal year.

g. On or before March 1 and September 1 of each fiscal year, the department of human services

shall provide the risk pool board with a report of the financial condition of each funding source administered by the board. The report shall include but is not limited to an itemization of the funding source's balances, types and amount of revenues credited, and payees and payment amounts for the expenditures made from the funding source during the reporting period.

2001 Acts, ch 155, §4 – 8, 11

Purchase of service provider reimbursement; 2000 Acts, ch 1221, §3; 2001 Acts, ch 184, §2

2001 amendments striking subsection 2 and amending former subsection 3, renumbered as 2, take effect May 21, 2001, and apply to fiscal years beginning on or after July 1, 2001; crediting of remaining moneys in the incentive and efficiency pool; 2001 Acts, ch 155, §11

Subsection 1, paragraphs b, c, and d amended

Subsection 2 stricken and former subsection 3 renumbered as 2

Subsection 2, NEW paragraph a and former paragraphs a – e redesignated as b – f

Subsection 2, paragraph d, subparagraphs (1), (2), and (4) amended

Subsection 2, NEW paragraph g

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 the Iowa national guard, 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 or 476A that shall be subject to taxation under chapter 437A and facilities of a municipal utility that are used for the provision of local exchange services pursuant to chapter 476, but only to the extent such facilities are used to provide such services, which shall be subject to taxation under chapter 433, except that section 433.11 shall not apply. 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, or leased from the city or county by the Iowa national guard or by a federal agency for the benefit of the Iowa national guard when devoted for public use and not for pecuniary profit. 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 company buildings and grounds.* The publicly owned buildings and grounds used exclusively for keeping fire engines and implements for extinguishing fires and for meetings of fire companies.

5. *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.

6. *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.

7. *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.

8. *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.

9. *Property of educational institutions.* Real estate owned by any educational institution of this state as a part of its endowment fund, to the extent of one hundred sixty acres in any civil township except any real property acquired after January 1, 1965, by any educational institution as a part of its endowment fund or upon which any income is derived or used, directly or indirectly, for full or partial payment for services rendered, shall be taxed beginning with the levies applied for taxes payable in the year 1967, at the same rate as all other property of the same class in the taxing district in which the real property is located. The property acquired prior to January 1, 1965, and held or owned as part of the endowment fund of an educational institution shall be subject to assessment and levy in the assessment year 1974 for taxes payable in 1975. All the property shall be listed on the assessment rolls in the district in which the property is located and an actual fair market value and an assessed or taxable value be ascribed to it, as contemplated by section 441.21, irrespective of whether an exemption under this subsection may be or is affirmed, and the information shall be open to public inspection; it being the intent of this section that the property be valued whether or not it

be subject to a levy. Every educational institution claiming an exemption under this subsection shall file with the assessor not later than February 1 of the year for which the exemption is requested, a statement upon forms to be prescribed by the director of revenue and finance, describing and locating the property upon which exemption is claimed. Property which is located on the campus grounds and used for student union purposes may serve food and beverages without affecting its exemption received pursuant to subsection 8 or this subsection.

10. *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.

11. *Agricultural produce.* Growing agricultural and horticultural crops except commercial orchards and vineyards.

12. *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.

13. *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.

14. *Statement of objects and uses filed.* A society or organization claiming an exemption under subsection 5 or subsection 8 shall file with the assessor not later than February 1 a statement upon forms to be prescribed by the director of revenue and finance, describing the nature of the property upon which the exemption is claimed and setting out in detail any uses and income from the property derived from the rentals, leases, or other uses of the property not solely for the appropriate objects of the society or organization. Upon the filing and allowance of the claim, the claim shall be allowed on the property for successive years without further filing as long as the property is used for the purposes specified in the original claim for exemption. When the property is sold or transferred, the county recorder shall provide notice of the transfer to the assessor. The notice shall describe the property transferred and the name of the person to whom title to the property is transferred.

The assessor, in arriving at the valuation of any property of the society or organization, shall take into consideration any uses of the property not for the appropriate objects of the organization and shall assess in the same manner as other property, all or any portion of the property involved which is leased or rented and is used regularly for commercial purposes for a profit to a party or individual. If a portion of the property is used regularly for commercial purposes, an exemption shall not be allowed upon property so used and the exemption

granted shall be in the proportion of the value of the property used solely for the appropriate objects of the organization, to the entire value of the property. However, the board of trustees or the board of directors of a hospital, as defined in section 135B.1, 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.

15. *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.

16. *Revoking or modifying exemption.* Any taxpayer or any taxing district may make application to the director of revenue and finance for revocation or modification 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 or modify 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 taxpayer or taxing district applicant and 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 shall hold a hearing prior to issuing any order for revocation or modification. An order made by the director of revenue and finance revoking or modifying an exemption shall be applicable to the tax year commencing with the tax year in which the application is made to the director or the tax year commencing with the tax year in which the director's own motion is filed. An order made by the director of revenue and finance revoking or modifying an exemption is subject to judicial review in accordance with chapter 17A, 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 or modifying an exemption is made by the director of revenue and finance.

17. *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.

18. *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.

19. *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, wastepaper 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.

20. *Impoundment structures.* The impoundment structure and any land underlying an impoundment located outside an incorporated city, which are not developed or used directly or indirectly for nonagricultural income-producing purposes and which are maintained in a condition satisfactory to the soil and water conservation district commissioners of the county in which the impoundment structure and the impoundment are located. A person owning land which qualifies for a property tax exemption under this subsection shall apply to the county assessor each year not later than February 1 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. The county assessor shall annually review each application for the property tax exemption under this subsection and submit it, with the recommen-

ation of the soil and water conservation district commissioners, to the board of supervisors for approval or denial. An applicant for a property tax exemption under this subsection may appeal the decision of the board of supervisors to the district court.

As used in this subsection, “*impoundment*” means a reservoir or pond which has a storage capacity of at least eighteen acre-feet of water or sediment at the time of construction; “*storage capacity*” means the total area below the crest elevation of the principal spillway including the volume of any excavation in the area; and “*impoundment structure*” means a dam, earthfill, or other structure used to create an impoundment.

21. *Low-rent housing.* The property owned and operated by a nonprofit organization providing low-rent housing for persons who are elderly and persons with physical and mental disabilities. 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 subsection 14.

22. *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 February 1 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 nonprofit 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.

23. *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 as-

sessed 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.

24. *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 not later than February 1 of the assessment year for which the exemption is requested. 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.

25. *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.

26. *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.

27. *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 multicomunity 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.

28. *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.

29. *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, or in conjunction 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, or to collect waste that would otherwise be collected by, or deposited with, a publicly owned sanitary landfill in order to decompose the waste to produce methane gas or other gases and to convert the gas to energy. However, property used to decompose the waste and convert the waste to gas is not eligible for this exemption.

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.

30. *Manufactured home community or mobile home park storm shelter.* A structure constructed as a storm shelter at a manufactured home community or mobile home park as defined in section 435.1. An application for this exemption shall be filed with the assessing authority not later than February 1 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 storm shelter to be exempted. If the storm shelter structure is used exclusively as a storm shelter, all of the structure’s assessed value shall be exempt from taxation. If the storm shelter structure is not used exclusively as a storm shelter, the storm shelter structure shall be assessed for taxation at seventy-five per-

cent of its value as commercial property.

31. *Barn preservation.* The increase in assessed value added to a farm structure constructed prior to 1937 as a result of improvements made to the farm structure for purposes of preserving the integrity of the internal and external features of the structure as a barn is exempt from taxation. To be eligible for the exemption, the structure must have been first placed in service as a barn prior to 1937. The exemption shall apply to the assessment year beginning after the completion of the improvements to preserve the structure as a barn.

For purposes of this subsection, “barn” means an agricultural structure, in whatever shape or design, which is used for the storage of farm products or feed or for the housing of farm animals, poultry, or farm equipment.

Application for this exemption shall be filed with the assessing authority not later than February 1 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 structure for which the added value is requested to be exempt.

Once the exemption is granted, the exemption shall continue to be granted for subsequent assessment years without further filing of applications as long as the structure continues to be used as a barn. The taxpayer shall notify the assessing authority when the structure ceases to be used as a barn.

32. *One-room schoolhouse preservation.* The increase in assessed value added to a one-room schoolhouse as a result of improvements made to the structure for purposes of preserving the integrity of the internal and external features of the structure as a one-room schoolhouse is exempt from taxation. The exemption shall apply to the assessment year beginning after the completion of the improvements to preserve the structure as a one-room schoolhouse.

Application for this exemption shall be filed with the assessing authority not later than February 1 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 one-room schoolhouse for which the added value is requested to be exempt.

Once the exemption is granted, the exemption shall continue to be granted for subsequent assessment years without further filing of applications as long as the structure is not used for dwelling purposes and the structure is preserved as a one-room schoolhouse. The taxpayer shall notify the assessing authority when the structure ceases to be eligible. The exemption in this subsection applies even though the one-room schoolhouse is no longer used for instructional purposes.

33. *Indian housing authority property.* Property owned and operated by an Indian housing authority, as defined in 24 C.F.R. § 950.102, created under Indian law, if a cooperative agreement has been made with the local governing body agreeing to the exemption. The exemption in this subsection is subject to the provisions of subsection 14.

For purposes of this subsection:

a. “Indian law” means the code of an Indian tribe recognized as eligible for services provided to Indians by the United States secretary of the interior.

b. “Local governing body” means the county board of supervisors if the property is located outside an incorporated city or the governing body of the city in which the property is located.

2001 Acts, ch 59, §1, 3; 2001 Acts, ch 116, §20; 2001 Acts, ch 139, §1, 2, 4; 2001 Acts, ch 150, §11 – 14, 26; 2001 Acts, ch 153, §16; 2001 Acts, 1st Ex, ch 4, §4, 36

2001 amendments to subsections 14, 20, and 22, and amendment to the filing deadline in subsection 30 are effective January 1, 2002, and apply to claims filed on or after that date; 2001 Acts, ch 150, §26

2001 amendment to subsection 29 is effective May 16, 2001, and applies retroactively to January 1, 1998, for purposes of taxes levied pursuant to section 437A.6; filing of claims for credit for tax years 1998 – 2001; 2001 Acts, ch 139, §2, 4; 2001 Acts, 1st Ex, ch 4, §4, 36

Terminology change applied

Subsection 2 amended

Subsection 14, unnumbered paragraph 1 amended

Subsections 16 and 20 amended

Subsection 22, unnumbered paragraph 2 amended

Subsection 29, unnumbered paragraph 2 amended

Subsection 30 amended

NEW subsection 33

427.11 Grantee or devisee to pay tax.

If the petitioner or person described in section 427.9 sells any parcel upon which the taxes, special assessments, and rates or charges, including interest, fees, and costs, have been suspended, or if any parcel, or any part of the parcel, upon which the taxes, special assessments, and rates or charges, including interest, fees, and costs, have been suspended, passes by devise, bequest, or inheritance to any person other than the surviving spouse or minor child of the petitioner or other person, the total amount due that has been thus suspended shall all become due and payable with the next semiannual installment of taxes. Interest shall accrue on the total amount due at the rate of one and one-half percent per month from the next succeeding delinquency date to the month of payment unless payment is tendered in full before the delinquency date. Interest does not accrue during the suspension period on suspended parcels, including those parcels suspended prior to April 1, 1992. The petitioner, or any other person, may pay the suspended amounts at any time during the suspension period. Except in the case of manufactured or mobile home taxes, special assessments, or rates or charges, the treasurer may accept a partial payment during the suspension period with the partial payment first being applied to interest and costs.

2001 Acts, ch 153, §15; 2001 Acts, ch 176, §80

Terminology change applied

427.16 Historic property — rehabilitation tax exemption — application.

1. The board of supervisors shall annually designate real property in the county for a historic property tax exemption.

2. Application for the exemption shall be filed with the assessor, not later than February 1 of the assessment year, on forms provided by the department of revenue and finance. The exemption application shall include an approved application for certified substantial rehabilitation from the state historic preservation officer and documentation of additional property tax relief or financial assistance currently allowed for the real property. Upon receipt of the application, the assessor shall certify whether or not the property is eligible to receive the exemption and shall forward the application to the board.

3. Before the board may designate real property for the exemption, the board shall establish priorities for which an exemption may be granted. The priorities shall be based upon financial assistance or property tax relief the owner is receiving for the property or for which the property is eligible. 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, a public hearing is not required if the proposed priorities are the same as those established for the previous year. After the public hearing, the board shall adopt by resolution the proposed priority list or another priority list.

4. After receipt from the assessor of an exemption application with an accompanying approved application from the state historic preservation officer, and the establishment of a priority list, the board shall grant a tax exemption under this section using the adopted priority list. The board shall notify an owner in writing of a denial of the exemption under this section and an explanation of the denial.

5. Real property designated for the tax exemption shall be designated by April 15 of the assessment year in which the fiscal year begins for which the exemption is granted. Notification shall be sent to the county auditor and the applicant.

6. The owner shall apply for an exemption and the exemption may be approved for a period of not more than four years.

7. For purposes of this section “*historic property*” means any of the following:

- a. Property in Iowa listed on the national register of historic places.
- b. An historical site as defined in section 303.2.
- c. Property located in an area of historical significance as defined in section 303.20.
- d. Property located in an area designated as an area of historic significance under section 303.34.
- e. Property designated an historic building or

site as approved by a county or municipal landmark ordinance.

8. For purposes of this section, “*substantial rehabilitation*” means qualified expenditures which exceed the greater of the adjusted basis of the building or five thousand dollars.

9. For purposes of this section, “*adjusted basis*” means the acquisition cost of the property to the taxpayer; less the value of the land; less depreciation taken or one-half the current assessed valuation of the property, whichever is greater; plus the cost of additions or improvements to the property since its acquisition.

10. For purposes of this section, “*qualified expenditures*” means costs incurred to preserve or to maintain a building as a historic property according to the secretary of the interior’s standards for rehabilitation and guidelines for rehabilitating historic buildings.

11. The assessor shall determine the base year valuation of the historic property upon receipt of the approved application and shall make a notation on each statement of assessment that the exemption of the historic property shall be based upon the certification from the state historic preservation officer. An assessor shall make an annual report to the county auditor of all substantial rehabilitations of historic property made in the county which receive a tax exemption under this section and shall submit a copy or summary of the record to the state historic preservation officer.

12. A tax exemption granted under this section is valid if the property continues to be certified by the state historic preservation officer. If the property is sold or transferred, the buyer or transferee is not required to refile for the tax exemption for the year in which the property is purchased or transferred.

13. The valuation for purposes of computing the assessed valuation of property under this section following the four-year exemption period is as follows:

a. For the first year after the expiration of the four-year exemption period, the valuation is the base year valuation plus twenty-five percent of the adjustment in value.

b. For the second year after the expiration of the four-year exemption period, the valuation is the base year valuation plus fifty percent of the adjustment in value.

c. For the third year after the expiration of the four-year exemption period, the valuation is the base year valuation plus seventy-five percent of the adjustment in value.

d. For the fourth year after the expiration of the four-year exemption period, the valuation is based upon the current fair cash value.

14. An additional application for a tax exemption under this section for substantial rehabilitation shall not affect subsection 11 and under sub-

section 13 the increase in assessed value of the historic property following a four-year tax exemption period.

15. The department of cultural affairs shall adopt rules pursuant to chapter 17A to administer

this section.

2001 Acts, ch 150, §15, 26
2001 amendment to subsection 2 is effective January 1, 2002, and applies to claims filed on or after that date; 2001 Acts, ch 150, §26
Subsection 2 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 definition of "attached" in subsection 2, property is not "attached" if it is a fixture used for cooking, refrigeration, or freezing of value-added agricultural products, used in value-added agricultural processing or used in direct support of value-added agricultural processing. For purposes of this subsection, "direct support" includes storage by public refrigerated warehouses for processors of value-added agricultural products. Such fixtures shall not be considered "attached" whether owned directly by the processor or warehouse operator or by another who leases the fixture to the processor or warehouse operator. This subsection shall not apply to fixtures used primarily for retail sale or display.

5. 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.

6. 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.

7. 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 au-

thority's powers to assess or reassess under other provisions of law.

8. The director of revenue and finance shall promulgate rules subject to chapter 17A to carry out the intent of this section.

2001 Acts, ch 116, §21, 28
Subsection 4 is effective May 3, 2001, and applies retroactively to assessment years beginning on or after January 1, 2000; 2001 Acts, ch 116, §28
NEW subsection 4 and former subsections 4 – 7 renumbered as 5 – 8

CHAPTER 427B

SPECIAL TAX PROVISIONS

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 as a result of action by the general assembly limiting the amount appropriated to the fund, 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 September 30.

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. If the taxing district is an urban renewal area, the amount of the replacement claim shall be apportioned as provided in subsection 4 unless the municipality elects to proceed under subsection 5.

4. *a.* If the total assessed value of property located in an urban renewal area taxing district is equal to or more than that portion of such valuation defined in section 403.19, subsection 1, the total tax replacement amount computed pursuant to section 427B.19 shall be credited to that portion of the assessed value defined in section 403.19, subsection 2.

b. If the total assessed value of the property is less than that portion of such valuation defined in section 403.19, subsection 1, the replacement amount shall be credited to those portions of the assessed value defined in section 403.19, subsections 1 and 2, as follows:

(1) To that portion defined in section 403.19, subsection 1, an amount equal to the amount that would be produced by multiplying the applicable consolidated levy times the difference between the

assessed value of the taxable property defined in section 403.19, subsection 1, and the total assessed value in the budget year for which the replacement claim is computed.

(2) To that portion defined in section 403.19, subsection 2, the remaining amount, if any.

c. Notwithstanding the allocation provisions of paragraphs “*a*” and “*b*”, the amount of the tax replacement amount that shall be allocated to that portion of the assessed value defined in section 403.19, subsection 2, shall not exceed the amount equal to the amount certified to the county auditor under section 403.19 for the budget year in which the claim is paid, after deduction of the amount of other revenues committed for payment on that amount for the budget year. The amount not allocated to that portion of the assessed value defined in section 403.19, subsection 2, as a result of the operation of this paragraph, shall be allocated to that portion of assessed value defined in section 403.19, subsection 1.

5. A municipality may elect to reduce the amount of assessed value of property defined in section 403.19, subsection 1, by an amount equal to that portion of the amount of such assessed value which was phased out for the fiscal year by operation of section 427B.17, subsection 3. The applicable assessment roll and ordinance providing for the division of taxes under section 403.19 in the urban renewal taxing district shall be deemed to be modified for that fiscal year only to the extent of such adjustment without further action on the part of the city or county implementing the urban renewal taxing district.

2001 Acts, ch 116, §22
Subsection 2 amended

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 as a result of action by the general assembly limiting the amount appropriated to the

fund, 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 as a result of action by the general assembly limiting the amount appropriated to the fund, 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.

2001 Acts, ch 116, §23
Section amended

CHAPTER 427C

FOREST AND FRUIT-TREE RESERVATIONS

427C.3 Forest reservation.

A forest reservation shall contain not less than two hundred growing forest trees on each acre. If the area selected is a forest containing the required number of growing forest trees, it shall be accepted as a forest reservation under this chapter provided application is made or on file on or before February 1 of the exemption year. If any buildings are standing on an area selected as a forest reservation under this section or a fruit-tree reservation under section 427C.7, one acre of that area shall be excluded from the tax exemption. However, the exclusion of that acre shall not affect the area's meeting the acreage requirement of section 427C.2.

2001 Acts, ch 150, §16, 26
2001 amendment is effective January 1, 2002, and applies to claims filed

on or after that date; 2001 Acts, ch 150, §26
Section amended

427C.7 Fruit-tree reservation — duration of exemption.

A fruit-tree reservation shall contain on each acre, at least forty apple trees, or seventy other fruit trees, growing under proper care and annually pruned and sprayed. A reservation may be claimed as a fruit-tree reservation, under this chapter, for a period of eight years after planting provided application is made or on file on or before February 1 of the exemption year.

2001 Acts, ch 150, §17, 26
2001 amendment is effective January 1, 2002, and applies to claims filed on or after that date; 2001 Acts, ch 150, §26
Section amended

CHAPTER 428A

REAL ESTATE TRANSFER TAX

428A.5 Documentation of payment.

The amount of tax imposed by this chapter shall be paid to the county recorder in the county where the real property is located and the amount received and the initials of the county recorder shall appear on the face of the document or instrument. The method of documentation of a transfer tax shall be approved by the department of revenue and finance.

2001 Acts, ch 44, §19
Section amended

428A.8 Remittance to state treasurer — portion retained in county.

On or before the tenth day of each month the county recorder shall determine and pay to the treasurer of state eighty-two and three-fourths

percent of the receipts from the real estate transfer tax collected during the preceding month and the treasurer of state shall deposit ninety-five percent of the receipts in the general fund of the state and transfer five percent of the receipts to the shelter assistance fund created in section 15.349.

The county recorder shall deposit the remaining seventeen and one-fourth percent of the receipts in the county general fund.

Any tax or additional tax found to be due shall be collected by the county recorder. If the county recorder is unable to collect the tax, the director of revenue and finance shall collect the tax in the same manner as taxes are collected in chapter 422, division III. If collected by the director of revenue and finance, the director shall pay the county its

proportionate share of the tax. Section 422.25, subsections 1, 2, 3, and 4, and sections 422.26, 422.28 through 422.30, and 422.73, consistent with this chapter, apply with respect to the collection of any tax or additional tax found to be due, in the same manner and with the same effect as if the deed, instrument, or writing were an income tax return within the meaning of those statutes.

The county recorder shall keep records and make reports with respect to the real estate transfer tax as the director of revenue and finance prescribes.

2001 Acts, ch 150, §18
NEW unnumbered paragraph 3

428A.9 Refund of tax.

To receive a refund from the state the taxpayer shall petition the state appeal board for a refund of the amount of overpayment of the tax paid to the treasurer of state. To receive a refund from the county the taxpayer shall petition the board of supervisors for a refund of the remaining portion of the overpayment paid to that county.

2001 Acts, ch 150, §19
NEW section

CHAPTER 432

INSURANCE COMPANIES TAX

432.11 Premium tax exemption for basic benefit health plans.

Premiums collected on sales of basic benefit health policies, approved by the commissioner pursuant to subchapter II of chapter 513B,* are exempt from premium tax.

*Chapter 513B, subchapter II, repealed effective January 1, 2002; 2001

Acts, ch 69, §38, 39
Section not amended; footnote added

432.12 Premium tax credit for employer-sponsored health plan premium credit. Repealed by 2001 Acts, ch 69, § 38, 39.

Repeal is effective January 1, 2002; 2001 Acts, ch 69, §39

CHAPTER 435

TAX ON HOMES IN MANUFACTURED HOME COMMUNITIES AND MOBILE HOME PARKS

435.1 Definitions.

The following definitions shall apply to this chapter:

1. Unless the context otherwise requires, “book”, “list”, “record”, or “schedule” kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2. “Home” means a mobile home or a manufactured home.

3. “Manufactured home” means a factory-built structure built under authority of 42 U.S.C. § 5403, that 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 manufactured home community or a mobile home park, the home must be titled and is subject to the manufactured or mobile home square foot tax. If a manufactured home is placed outside a manufactured home community or a mobile home park, the home must be titled and is to be assessed and taxed as real estate.

4. “Manufactured home community” means the same as land-leased community defined in sections 335.30A and 414.28A.

5. “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.

6. “Mobile home park” means a site, lot, field, or tract of land upon which three or more mobile homes or manufactured homes, or a combination 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 “*manufactured home community*” or “*mobile home park*” shall not be construed to include manufactured or 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 manufactured home community or a mobile home park must be classified as to whether it is a residential manufactured home community or a mobile home park or a recreational manufactured home community or a mobile home park or both. The manufactured home community or mobile home park residential landlord and tenant Act* only applies to residential manufactured home communities or mobile home parks.

7. “*Modular home*” means a factory-built structure 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 manufactured home community or 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 manufactured home community or a mobile home park, the home shall be considered real property and is to be assessed and taxed as real estate.

2001 Acts, ch 153, §11
*Chapter 562B
Section amended

435.22 Annual tax — credit.

The owner of each mobile home or manufactured home located within a manufactured home community or mobile home park shall pay to the county treasurer an annual tax. However, when the owner is any educational institution and the home is used solely for student housing or when the owner is the state of Iowa or a subdivision of the state, the owner shall be exempt from the tax. The annual tax shall be computed as follows:

1. Multiply the number of square feet of floor space each home contains when parked and in use by twenty cents. In computing floor space, the exterior measurements of the home shall be used as shown on the certificate of title, but not including any area occupied by a hitching device.

2. If the owner of the home is an Iowa resident, has attained the age of twenty-three years on or before December 31 of the base year, and has an income when included with that of a spouse which is less than eight thousand five hundred dollars per year, the annual tax shall not be imposed on the home. If the income is eight thousand five hundred dollars or more but less than sixteen thousand five hundred dollars, the annual tax shall be computed as follows:

If the Household Income is:	Annual Tax Per Square Foot:
\$ 8,500 — 9,499.99	3.0 cents
9,500 — 10,499.99	6.0
10,500 — 12,499.99	10.0
12,500 — 14,499.99	13.0
14,500 — 16,499.99	15.0

For purposes of this subsection “*income*” means income as defined in section 425.17, subsection 7, and “*base year*” means the calendar year preceding the year in which the claim for a reduced rate of tax is filed. The home reduced rate of tax shall only be allowed on the home in which the claimant is residing at the time the claim for a reduced rate of tax is filed or was residing at the time of the claimant’s death in the case of a claim filed on behalf of a deceased claimant by the claimant’s legal guardian, spouse, or attorney, or by the executor or administrator of the claimant’s estate.

Beginning with the 1998 base year, the income dollar amounts set forth in this subsection shall be multiplied by the cumulative adjustment factor for that base year as determined in section 425.23, subsection 4.

3. The amount thus computed shall be the annual tax for all homes, except as follows:

a. For the sixth through ninth years after the year of manufacture the annual tax is ninety percent of the tax computed according to subsection 1 or 2 of this section, whichever is applicable.

b. For all homes ten or more years after the year of manufacture the annual tax is eighty percent of the tax computed according to subsection 1 or 2 of this section, whichever is applicable.

4. The tax shall be figured to the nearest even whole dollar.

5. A claim for credit for manufactured or mobile home tax due shall not be paid or allowed unless the claim is actually filed with the county treasurer between January 1 and June 1, both dates inclusive, immediately preceding the fiscal year during which the home taxes are due. However, in case of sickness, absence, or other disability of the claimant, or if in the judgment of the county treasurer good cause exists, the county treasurer may extend the time for filing a claim for credit through September 30 of the same calendar year. The county treasurer shall certify to the director of revenue and finance on or before November 15 each year the total dollar amount due for claims allowed.

The forms for filing the claim shall be provided by the department of revenue and finance. The forms shall require information as determined by the department.

In case of sickness, absence, or other disability of the claimant or if, in the judgment of the director of revenue and finance, good cause exists and the

claimant requests an extension, the director may extend the time for filing a claim for credit or reimbursement. However, any further time granted shall not extend beyond December 31 of the year in which the claim was required to be filed. Claims filed as a result of this paragraph shall be filed with the director who shall provide for the reimbursement of the claim to the claimant.

The director of revenue and finance shall certify the amount due to each county, which amount shall be the dollar amount which will not be collected due to the granting of the reduced tax rate under subsection 2.

The amounts due each county shall be paid by the department of revenue and finance on December 15 of each year, drawn upon warrants payable to the respective county treasurers. The county treasurer in each county shall apportion the payment in accordance with section 435.25.

There is appropriated annually from the general fund of the state to the department of revenue and finance an amount sufficient to carry out this subsection.

2001 Acts, ch 153, §15, 16; 2001 Acts, ch 176, §80
Terminology changes applied

435.23 Exemptions — prorating tax.

The manufacturer's and dealer's inventory of mobile homes, manufactured homes, or modular homes* not in use as a place of human habitation shall be exempt from the annual tax. All travel trailers shall be exempt from this tax. The homes and travel trailers in the inventory of manufacturers and dealers shall be exempt from personal property tax. The homes coming into Iowa from out of state and located in a manufactured home community or mobile home park shall be liable for the tax computed pro rata to the nearest whole month, for the time the home is actually situated in Iowa.

2001 Acts, ch 153, §16
*See §435.34
Terminology change applied

435.24 Collection of tax.

1. The annual tax is due and payable to the county treasurer on or after July 1 in each fiscal year and is collectible in the same manner and at the same time as ordinary taxes as provided in sections 445.36, 445.37, and 445.39. Interest at the rate prescribed by law shall accrue on unpaid taxes. Both installments of taxes may be paid at one time. The September installment represents a tax period beginning July 1 and ending December 31. The March installment represents a tax period beginning January 1 and ending June 30. A mobile home, manufactured home, or modular home* coming into this state from outside the state, put in use from a dealer's inventory, or put in use at any time after July 1 or January 1, and located in a manufactured home community or

mobile home park, is subject to the taxes prorated for the remaining unexpired months of the tax period, but the purchaser is not required to pay the tax at the time of purchase. Interest attaches the following April 1 for taxes prorated on or after October 1. Interest attaches the following October 1 for taxes prorated on or after April 1. If the taxes are not paid, the county treasurer shall send a statement of delinquent taxes as part of the notice of tax sale as provided in section 446.9. The owner of a home who sells the home between July 1 and December 31 and obtains a tax clearance statement is responsible only for the September tax payment and is not required to pay taxes for subsequent tax periods. If the owner of a home located in a manufactured home community or mobile home park sells the home, obtains a tax clearance statement, and obtains a replacement home to be located in a manufactured home community or mobile home park, the owner shall not pay taxes under this chapter for the newly acquired home for the same tax period that the owner has paid taxes on the home sold. Interest for delinquent taxes shall be calculated to the nearest whole dollar. In calculating interest each fraction of a month shall be counted as an entire month.

2. The home owners upon issuance of a certificate of title or upon transporting to a new site shall file the address, township, and school district, of the location where the home is parked with the county treasurer's office. Failure to comply is punishable as set out in section 435.18. When the new location is outside of a manufactured home community or mobile home park, the county treasurer shall provide to the assessor a copy of the tax clearance statement for purposes of assessment as real estate on the following January 1.

3. Each manufactured home community or mobile home park owner shall notify monthly the county treasurer concerning any home arriving in or departing from the manufactured home community or park without a tax clearance statement. The records of the owner shall be open to inspection by a duly authorized representative of any law enforcement agency. The manufactured home community or mobile home park owner or manager shall make an annual report to the county treasurer due June 1 of the homes sited in the manufactured home community or mobile home park, listing the owner and mailing address of each home located in the manufactured home community or mobile home park. The report is delinquent if not filed with the county treasurer by June 30. In addition to the annual report, the owner or manager shall also report any changes of homes or owners in a report due December 1, which is delinquent if not filed by December 31. However, if no changes have occurred since the June annual report, the December report is not required to be filed.

4. The tax is a lien on the vehicle senior to any other lien upon it except a judgment obtained in an action to dispose of an abandoned home under section 555B.8. The home bearing a current registration issued by any other state and remaining within this state for an accumulated period not to exceed ninety days in any twelve-month period is not subject to Iowa tax. However, when one or more persons occupying a home bearing a foreign registration are employed in this state, there is no exemption from the Iowa tax. This tax is in lieu of all other taxes general or local on a home.

5. Before a home may be moved from its present site by any person, a tax clearance statement in the name of the owner must be obtained from the county treasurer of the county where the present site is located certifying that taxes are not owing under this section for previous years and that the taxes have been paid for the current tax period. When a person moves a home from real property to a dealer's stock or to a manufactured home community or mobile home park, as defined in section 435.1, a tax clearance statement shall be applied for, and issued, from the county treasurer of the county where the present site is located. When the home is moved to another county in this state, the county treasurer shall forward a copy of the tax clearance statement to the county treasurer of the county in which the home is being relocated. However, a tax clearance statement is not required for a home in a manufacturer's or dealer's stock which has not been used as a place for human habitation. A tax clearance form is not required to move an abandoned home. A tax clearance form is not required in eviction cases provided the manufactured home community or mobile home park owner or manager advises the county treasurer that the tenant is being evicted. If a dealer acquires a home from a person other than a manufacturer, the person shall provide a tax clearance statement in the name of the owner of record to the dealer. The tax clearance statement shall be provided by the county treasurer in a method prescribed by the department of transportation.

6. *a.* As an alternative to the semiannual or annual payment of taxes, the county treasurer may accept partial payments of current year home taxes. A minimum payment amount shall be established by the treasurer. The treasurer shall transfer amounts from each taxpayer's account to be applied to each semiannual tax installment prior to the delinquency dates specified in section 445.37 and the amounts collected shall be apportioned by the tenth of the month following transfer. If, prior to the due date of each semiannual installment, the account balance is insufficient to fully satisfy the installment, the treasurer shall transfer and apply the entire account balance, leaving an unpaid balance of the installment. Interest shall attach on the unpaid balance in accor-

dance with section 445.39. Unless funds sufficient to fully satisfy the delinquency are received, the treasurer shall collect the unpaid balance as provided in sections 445.3 and 445.4 and chapter 446. Any remaining balance in a taxpayer's account in excess of the amount needed to fully satisfy an installment shall remain in the account to be applied toward the next semiannual installment. Any interest income derived from the account shall be deposited in the county's general fund to cover administrative costs. The treasurer shall send a notice with the tax statement or by separate mail to each taxpayer stating that, upon request to the treasurer, the taxpayer may make partial payments of current year home taxes.

b. Partial payment of taxes which are delinquent may be made to the county treasurer. A minimum payment amount shall be established by the treasurer. The minimum payment must be equal to or exceed the interest, fees, and costs attributed to the oldest delinquent installment of the tax and shall be apportioned in accordance with section 445.57. If the payment does not include the whole of any installment of the delinquent tax, the unpaid tax shall continue to accrue interest pursuant to section 445.39. Partial payment shall not be permitted in lieu of redemption if the property has been sold for taxes under chapter 446 and under any circumstances shall not constitute an extension of the time period for a sale under chapter 446.

7. Current year taxes may be paid at any time regardless of any outstanding prior year delinquent taxes.

2001 Acts, ch 153, §16

*See §435.34

Terminology change applied

435.26 Conversion to real property.

1. *a.* A mobile home or manufactured home which is located outside a manufactured home community or mobile home park shall be converted to real estate by being placed on a permanent foundation and shall be assessed for real estate taxes. A home, after conversion to real estate, is eligible for the homestead tax credit and the military tax exemption as provided in sections 425.2 and 426A.11.

b. If a security interest is noted on the certificate of title, the home owner shall tender to the secured party a mortgage on the real estate upon which the home is to be located in the unpaid amount of the secured debt, and with the same priority as or a higher priority than the secured party's security interest, or shall obtain the written consent of the secured party to the conversion, in which latter case the lien notation on the certificate of title shall suffice to preserve the lienholder's security in the home separate from any interest in the land.

2. After complying with subsection 1, the owner shall notify the assessor who shall inspect the

new premises for compliance. If a security interest is noted on the certificate of title, the assessor shall require an affidavit, as defined in section 622.85, from the home owner, declaring that the owner has complied with subsection 1, paragraph “b”, and setting forth the method of compliance.

a. If compliance with subsection 1, paragraph “b”, has been accomplished by the secured party accepting the tender of a mortgage, the assessor shall collect the home vehicle title and enter the property upon the tax rolls.

b. If compliance with subsection 1, paragraph “b”, has been accomplished by the secured party consenting to the conversion without accepting a mortgage, the secured party shall retain the home vehicle title and the assessor shall note the conversion on the assessor’s records and enter the property upon the tax rolls. So long as a security interest is noted on the certificate of title, the title to the home will not be merged with title to the land, and the sale or foreclosure of an interest in the land shall not affect title to the home or any security interest in the home.

3. When the property is entered on the tax rolls, the assessor shall also enter on the tax rolls the title number last assigned to the mobile home or manufactured home and the manufacturer’s identification number.

2001 Acts, ch 153, §16
Terminology change applied

435.27 Reconversion.

1. A mobile home or manufactured home converted to real estate under section 435.26 may be reverted to a home as provided in this section when it is moved to a manufactured home community or mobile home park or a manufactured home retailer’s inventory. When the home is located within a manufactured home community or mobile home park, the home shall be taxed pursuant to section 435.22, subsection 1.

2. If the vehicular frame of the home can be modified to return it to the status of a mobile home or manufactured home, the owner or a secured party holding a mortgage or certificate of title pursuant to section 435.26 who has obtained possession of the home may apply to the county treasurer as provided in section 321.20 for a certificate of title for the home. If a mortgage exists on the real estate, a security interest in the home shall be given to a secured party not applying for reconversion and noted on the certificate of title with the same priority or a higher priority than the secured party’s mortgage interest. A reconversion shall not occur without the written consent of every secured party holding a mortgage or certificate of title.

If the secured party has elected to retain the home vehicle title pursuant to section 435.26, sub-

section 2, paragraph “b”, an owner applying for reconversion shall present to the county treasurer written consent to the reconversion from all secured parties and an affirmation from the secured party holding the title that the title is in its possession and is intact. Upon receipt of the affirmation, the county treasurer shall notify the assessor of the reconversion, which notification constitutes compliance by the owner with subsection 3.

3. After compliance with subsection 2 and receipt of the title, the owner shall notify the assessor of the reconversion. The assessor shall remove the assessed valuation of the home from assessment rolls as of the succeeding January 1 when the home becomes subject to taxation as provided under section 435.24.

2001 Acts, ch 153, §16, 18
Terminology changes applied

435.28 County treasurer to notify assessor.

Upon issuance of a certificate of title to a mobile home or manufactured home which is not located in a manufactured home community or mobile home park or dealer’s inventory, the county treasurer shall notify the assessor of the existence of the home for tax assessment purposes.

2001 Acts, ch 153, §16
Terminology change applied

435.34 Modular home exemption.

For the purposes of this chapter a modular home shall not be construed to be a mobile home and shall be exempt from the provisions of this chapter. However, this section shall not prohibit the location of a modular home within a manufactured home community or mobile home park.

This section does not apply to manufactured home communities or mobile home parks in existence on or before January 1, 1998. If a modular home is placed in a manufactured home community or mobile home park which was in existence on or before January 1, 1998, that modular home shall be subject to property tax pursuant to section 435.22.

2001 Acts, ch 153, §16
Terminology change applied

435.35 Existing home outside of manufactured home community or mobile home park — exemption.

A taxable mobile home or manufactured home which is not located in a manufactured home community or mobile home park as of January 1, 1995, shall be assessed and taxed as real estate. The home is also exempt from the permanent foundation requirements of this chapter until the home is relocated.

2001 Acts, ch 153, §16
Terminology change applied

CHAPTER 437A

TAXES ON ELECTRICITY AND NATURAL GAS PROVIDERS

437A.3 Definitions.

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

1. *“Assessed value”* means the base year assessed value, as adjusted by section 437A.19, subsection 2. *“Base year assessed value”*, for a taxpayer other than an electric company, natural gas company, or electric cooperative, means the value attributable to property identified in section 427A.1, subsection 1, paragraph “h”, certified by the department of revenue and finance to the county auditors for the assessment date of January 1, 1997, and the value attributable to property identified in section 427A.1 and section 427B.17, subsection 5, as certified by the local assessors to the county auditors for the assessment date of January 1, 1997, provided, that for a taxpayer subject to section 437A.17A, such value shall be the value certified by the department of revenue and finance and local assessors to the county auditors for the assessment date of January 1, 1998. However, *“base year assessed value”*, for purposes of property of a taxpayer that is a municipal utility, if the property is not a major addition, and the property was initially assessed to the taxpayer as of January 1, 1998, and is not located in a county where the taxpayer had property that was assessed for purposes of this chapter as of January 1, 1997, means the value attributable to such property for the assessment date of January 1, 1998.

For taxpayers that are electric companies, natural gas companies, and electric cooperatives, *“base year assessed value”* means the average of the total of these values for each taxpayer for the assessment dates of January 1, 1993, through January 1, 1997, allocated among taxing districts in proportion to the allocation of the taxpayer’s January 1, 1998, assessed value among taxing districts. *“Base year assessed value”* does not include value attributable to steam-operating property.

2. *“Book”, “list”, “record”, or “schedule”* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

3. *“Centrally assessed property tax”* means property tax imposed with respect to the value of property determined by the director pursuant to section 427.1, subsection 2, section 428.29, chapter 437, and chapter 438, Code 1997, and allocated to electric service and natural gas service. For purposes of this subsection, *“natural gas service”* means such service provided by natural gas pipelines permitted pursuant to chapter 479.

4. *“Consumer”* means an end user of electricity or natural gas used or consumed within this state. *“Consumer”* includes any master-metered facility even though the electricity or natural gas deliv-

ered to such facility may ultimately be used by another person. A person to whom electricity or natural gas is delivered by a master-metered facility is not a consumer. A *“master-metered facility”* means any multi-occupancy premises where units are separately rented or owned and where electricity or natural gas is used in centralized heating, cooling, water-heating, or ventilation systems, where individual metering is impractical, where the facility is designated for elderly or handicapped persons and utility costs constitute part of the operating cost and are not apportioned to individual units, or where submetering or resale of service was permitted prior to 1966.

5. *“Delivery”* means the physical transfer of electricity or natural gas to a consumer. Physical transfer to a consumer occurs when transportation of electricity or natural gas ends and such electricity or natural gas becomes available for use or consumption by a consumer.

6. *“Director”* means the director of revenue and finance.

7. *“Electric company”* means a person engaged primarily in the production, delivery, service, or sales of electric energy whether formed or organized under the laws of this state or elsewhere. *“Electric company”* includes a combination natural gas company and electric company. *“Electric company”* does not include an electric cooperative or a municipal utility.

8. *“Electric competitive service area”* means an electric service area assigned by the utilities board under chapter 476 as of January 1, 1999, including utility property and facilities described in section 476.23, subsection 3, which were owned and served by the electric company, electric cooperative, or municipal utility serving such area on January 1, 1999.

9. *“Electric cooperative”* means an electric utility provider formed or organized as an electric cooperative under the laws of this state or elsewhere. An electric cooperative shall also include an incorporated city utility provider. *“Generation and transmission electric cooperative”* means an electric cooperative which owns both transmission lines and property which is used to generate electricity. *“Distribution electric cooperative”* means an electric cooperative other than a generation and transmission electric cooperative or a municipal electric cooperative association.

10. *“Electric power generating plant”* means a nameplate rated electric power generating plant, which produces electric energy from other forms of energy, including all taxable land, buildings, and equipment used in the production of such electric energy.

11. *“Incorporated city utility provider”* means

a corporation with assets worth one million dollars or more which has one or more platted villages located within the territorial limits of the tract of land which it owns, and which provides electricity to ten thousand or fewer customers.

12. “Lease” means a contract between a lessor and lessee pursuant to which the lessee obtains a present possessory interest in tangible property without obtaining legal title in such property. A contract to transmit or deliver electricity or natural gas using operating property within this state is not a lease. “Capital lease” means a lease classified as a capital lease under generally accepted accounting principles.

13. “Local amount” means the first forty-four million four hundred forty-four thousand four hundred forty-five dollars of the acquisition cost of any major addition which is an electric power generating plant and the total acquisition cost of any other major addition.

14. “Local taxing authority” means a city, county, community college, school district, or other taxing authority located in this state and authorized to certify a levy on property located within such authority for the payment of bonds and interest or other obligations of such authority.

15. “Local taxing district” means a geographic area with a common consolidated property tax rate.

16. “Low capacity factor electric power generating plant” means, for any tax year, an electric power generating plant, with the exception of an electric power generating plant owned or leased by an electric company, an electric cooperative, or a municipal utility, which operated during the preceding calendar year at a net capacity factor of twenty percent or less. “Net capacity factor” means net actual generation during the preceding calendar year divided by the product of nameplate capacity times the number of hours the plant was in the active state during the preceding calendar year. Upon commissioning, a plant is in the active state until it is decommissioned. “Net actual generation” means net electrical megawatt hours produced by a plant during the preceding calendar year.

17. “Major addition” means any acquisition on or after January 1, 1998, by a taxpayer, by transfer of ownership, self-construction, or capital lease of any interest in any of the following:

a. A building in this state where the acquisition cost of all interests acquired exceeds ten million dollars.

b. An electric power generating plant where the acquisition cost of all interests acquired exceeds ten million dollars. For purposes of this paragraph, “electric power generating plant” means each nameplate rated electric power generating plant owned solely or jointly by any person or electric power facility financed under the provisions of chapter 28F or 476A in which electrical energy is produced from other forms of energy, in-

cluding all equipment used in the production of such energy through its step-up transformer.

c. Natural gas operating property within a local taxing district where the acquisition cost of all interests acquired exceeds one million dollars.

d. Any property described in section 437A.16 in this state by a person not previously subject to taxation under this chapter.

For purposes of this chapter, the acquisition cost of an asset acquired by capital lease is its capitalized value determined under generally accepted accounting principles.

18. “Municipal electric cooperative association” means an electric cooperative, the membership of which is composed entirely of municipal utilities.

19. “Municipal utility” means all or part of an electric light and power plant system or a natural gas system, either of which is owned by a city, including all land, easements, rights-of-way, fixtures, equipment, accessories, improvements, appurtenances, and other property necessary or useful for the operation of the municipal utility.

20. “Natural gas company” means a person that owns, operates, or is engaged primarily in operating or utilizing pipelines for the purpose of distributing natural gas to consumers located within this state, excluding a gas distributing plant or company located entirely within any city and not a part of a pipeline transportation company. “Natural gas company” includes a combination natural gas company and electric company. “Natural gas company” does not include a municipal utility.

21. a. “Natural gas competitive service area” means any of the fifty-two natural gas competitive service areas described as follows:

(1) Each of the following municipal natural gas competitive service areas:

(a) Taylor county, except for those areas of Taylor county which are contained within another municipal natural gas competitive service area as described in this subsection.

(b) The city of Brighton in Washington county and the area within two miles of the city limits plus sections 5, 6, 7, 8, 17, 18, 19, 20, 29, and 30 in Brighton township; sections 19, 30, and 33 in Franklin township; sections 1, 2, 11, 12, 13, 14, 23, 24, 25, and 36 in Dutch Creek township; and sections 25, 26, 35, and 36 in Seventy-Six township.

(c) Davis county.

(d) The city of Brooklyn in Poweshiek county and the area within two miles of the city limits.

(e) The city of Cascade in Dubuque county and the area within two miles of the city limits.

(f) The city of Cedar Falls in Black Hawk county and the area within one mile of the city limits, not including any part of the city of Waterloo.

(g) The city of Clearfield in Taylor county and the area within two miles of the city limits and sections 20, 21, 26, and 27 of Platte township, Grant township in Taylor county, and Grant township in Ringgold county.

(h) The south half of Carroll county and sections 3 and 4 of Orange township in Guthrie county.

(i) Adams county, except those areas of Adams county which are contained within another municipal natural gas competitive service area as defined in this subsection.

(j) The city of Emmetsburg in Palo Alto county and the area within two miles of the city limits.

(k) The city of Everly in Clay county and the area within two miles of the city limits.

(l) The city of Fairbank and the area within two miles of the city limits plus the area one-quarter mile on either side of the county line road, Highway 281, from Fairbank to the intersection of Outer road and Tenth street, proceeding twenty-eight hundredths of a mile north in Buchanan and Fayette counties.

(m) The city of Gilmore City in Pocahontas and Humboldt counties and the area within two miles of the city limits.

(n) The city of Graettinger in Palo Alto county and the area within two miles of the city limits.

(o) The city of Guthrie Center in Guthrie county and the area within one mile of the city limits.

(p) The city of Harlan in Shelby county and the area within two miles of the city limits.

(q) The city of Hartley in O'Brien county and the area within one mile of the city limits, except the eastern one-half of section four in Omega township.

(r) The city of Hawarden in Sioux county and the area within two miles of the city limits.

(s) The city of Lake Park plus Silver Lake township in Dickinson county.

(t) Fayette and New Buda townships in Decatur county.

(u) The city of Lenox in Taylor county including section 1 of Platte township in Taylor county and the townships of Carl, Grant, Mercer, Colony, Union, and Prescott in Adams county.

(v) Grand River township in Wayne county.

(w) New Hope township in Union county and Monroe township in Madison county.

(x) Ewoldt and Eden townships in Carroll county and Iowa township in Crawford county.

(y) The city of Montezuma in Poweshiek county and the area within two miles of the city limits plus Jackson township in Poweshiek county except the city of Barnes City, Pleasant Grove and Monroe townships in Mahaska county except the city of Barnes City.

(z) Morning Sun township in Louisa county.

(aa) Wells and Washington townships in Appanoose county.

(ab) The city of Osage in Mitchell county and the area within two miles of the city limits.

(ac) The city of Prescott in Adams county and the area within two miles of the city limits.

(ad) The city of Preston in Jackson county and the area within two miles of the city limits.

(ae) The city of Remsen in Plymouth county and the area within two miles of the city limits.

(af) The city of Rock Rapids in Lyon county and the area within two miles of the city limits.

(ag) The city of Rolfe in Pocahontas county and the area within two miles of the city limits.

(ah) The city of Sabula in Jackson county and the area within two miles of the city limits.

(ai) The city of Sac City in Sac county and the area within two miles of the city limits.

(aj) The city of Sanborn in O'Brien county and the area within two miles of the city limits.

(ak) The city of Sioux Center in Sioux county and the area within two miles of the city limits.

(al) The city of Tipton in Cedar county and the area within two miles of the city limits.

(am) The city of Waukee in Dallas county.

(an) The city of Wayland plus Jefferson and Trenton townships in Henry county.

(ao) Seventy-Six and Lime Creek townships in Washington county except for those areas of Seventy-Six township which are contained within another municipal natural gas competitive service area as defined in this subsection.

(ap) The city of West Bend in Kossuth and Palo Alto counties and the area within two miles of the city limits.

(aq) The city of Whittemore in Kossuth county and the area within two miles of the city limits.

(ar) Scott, Canaan, and Wayne townships in Henry county.

(as) The city of Woodbine in Harrison county and the area within two miles of the city limits.

(at) Nishnabotna township in Crawford county.

(2) The natural gas competitive service area, excluding any municipal natural gas competitive service area described in subparagraph (1) and consisting of Sioux county; Plymouth county; Woodbury county; Ida county; Harrison county; Shelby county; Audubon county; Palo Alto county; Humboldt county; Mahaska county; Scott county; Lyon county except Wheeler, Dale, Liberal, Grant, Midland, and Elgin townships; O'Brien county except Union, Dale, Summit, Highland, Franklin, and Center townships; Cherokee county except Cherokee and Pilot townships; Monona county except Franklin township and the south half of Ashton township; Pottawattamie county except Crescent, Hazel Dell, Lake, Garner, Kane, and Lewis townships; Mills county except Glenwood and Center townships; Montgomery county except Douglas, Washington, and East townships; Page county except Valley, Douglas, Nodaway, Nebraska, Harlan, East River, Amity, and Buchanan townships; Fremont county except Green, Scott, Sidney, Benton, Washington, and Madison townships; Brighton and Pleasant townships in Cass county; Sac county except Clinton, Wall Lake, Coon Valley, Levey, Viola, and Sac townships; Newell township in Buena Vista county; Calhoun county except Reading township; Denmark town-

ship in Emmet county; Kossuth county except Eagle, Grant, Springfield, Hebron, Swea, Harrison, Ledyard, Lincoln, Seneca, Greenwood, Ramsey, and German townships; Webster county except Roland, Clay, Burnside, Yell, Webster, Gowrie, Lost Grove, Dayton, and Hardin townships; Guthrie county except Grant, Thompson, and Beaver townships; Union township in Union county; Madison county except Ohio and New Hope townships; Warren county except Virginia, Squaw, Liberty, and White Breast townships; Cedar, Union, Bluff Creek, and Pleasant townships in Monroe county; Marion county except Lake Prairie, Knoxville, Summit, and Union townships; Dallas county except Des Moines and Grant townships; Polk county except sections 4, 5, 6, 7, 8, 9, 16, 17, and 18 in Lincoln township and the city of Grimes, and sections 1, 2, 3, 10, 11, 12, 13, 14, and 15 in Union township; Poweshiek, Washington, Mound Prairie, Des Moines, Elk Creek, and Fairview townships in Jasper county; Wright county except Belmond and Pleasant townships; Geneseo township in Cerro Gordo county; Franklin county except Wisner and Scott townships and the city of Coulter; Butler county except Bennezette, Coldwater, Dayton, and Fremont townships; Floyd county except Rock Grove, Rudd, Rockford, Ulster, Scott, and Union townships; Branford township in Chickasaw county; Bremer county except Frederika, LeRoy, Sumner No. 2, Fremont, Dayton, Maxfield, and Franklin townships; Perry, Washington, Westburg, and Sumner townships in Buchanan county; Black Hawk county except Big Creek township; Fremont township in Benton county; Wapello county except Washington township; Benton and Steady Run townships in Keokuk county; the city of Barnes City in Poweshiek county; Iowa township in Washington county; Johnson county except Fremont township; Linn county except Franklin, Grant, Spring Grove, Jackson, Boulder, Washington, Otter Creek, Maine, Buffalo, and Fayette townships; Monroe township west and north of Otter Creek to its intersection with County Home road, and north of County Home road in Linn county; the city of Walford in Linn county; Farmington township in Cedar county; Wapsinonoc, Goshen, Moscow, Wilton, and Fulton townships in Muscatine county; and Lee county except Des Moines, Montrose, Keokuk, and Jackson townships.

(3) The natural gas competitive service area, excluding any municipal natural gas competitive service areas described in subparagraph (1) and consisting of that part of Kossuth county not described in subparagraph (2); Lincoln and Buffalo townships in Winnebago county; Worth county except Silver Lake, Hartland, Bristol, Brookfield, Fertile, and Danville townships; Cerro Gordo county except Grimes, Pleasant Valley, and Dougherty townships; Rock Grove and Rudd townships in Floyd county; Eden, Camanche, and Hampshire townships and the city of Clinton in

Clinton county; and Stacyville and Union townships in Mitchell county.

(4) The natural gas competitive service area, excluding any municipal natural gas service areas described in subparagraph (1) and consisting of Franklin township and the south half of Ashton township in Monona county; Crescent, Hazel Dell, Lake, Garner, Kane, and Lewis townships in Potawattamie county; Glenwood and Center townships in Mills county; Green, Scott, Sidney, Benton, Washington, and Madison townships in Fremont county; Cass, Bear Grove, Union, Noble, Edna, Victoria, Massena, Lincoln, and Grant townships in Cass county; Glidden township in Carroll county; Summit township in Adair county; Grant township in Guthrie county; Crawford county except Nishnabotna township; Clinton, Wall Lake, Coon Valley, Levey, Viola, and Sac townships in Sac county; Reading township in Calhoun county; Marshall, Sherman, Roosevelt, Dover, Grant, Lincoln, and Cedar townships in Pocahontas county; Union, Dale, Summit, Highland, Franklin, and Center townships in O'Brien county; the north half of Clay county plus Clay township; Dickinson county; Emmet county except Denmark, Armstrong Grove, and Iowa Lake townships; Greene county except Bristol, Hardin, Jackson, and Grant townships; Boone county except Worth, Colfax, Des Moines, Jackson, Dodge, and Harrison townships; Des Moines and Grant townships in Dallas county; Roland, Clay, Burnside, Yell, Webster, Gowrie, Lost Grove, Dayton, and Newark townships in Webster county; Clear Lake, Hamilton, Webster, Freedom, Independence, Cass, and Fremont townships in Hamilton county; Ell, Madison, and Ellington townships in Hancock county; Winnebago county except Lincoln and Buffalo townships; Silver Lake, Hartland, Bristol, Brookfield, Fertile, and Danville townships in Worth county; Etna township in Hardin county; Lafayette township and the west one-half of Howard township in Story county; the city of Grimes in Polk county; Independence, Malaka, Mariposa, Hickory Grove, Rock Creek, Kellogg, Newton, Sherman, Palo Alto, Buena Vista, and Richland townships in Jasper county; Palermo, Grant, and Fairfield townships in Grundy county; Bennezette, Coldwater, Dayton, and Fremont townships in Butler county; Rockford, Ulster, Scott, and Union townships in Floyd county; St. Ansgar and Mitchell townships in Mitchell county; Howard county; Chickasaw county except Branford township; Frederika, LeRoy, Sumner No. 2, Fremont, Dayton, Maxfield, and Franklin townships in Bremer county; Big Creek township in Black Hawk county; Brown township in Linn county; Madison township and the east half of Buffalo township in Buchanan county; Fayette county except Harlan, Fremont, Oran, and Jefferson townships; Winneshiek county; Alamakee county; Clayton county; Delaware county except Adams and Hazel Green townships; Dubuque county;

Jones county except Rome, Hale, Oxford, and the east half of Greenfield townships; and Jackson county.

(5) The natural gas competitive service area consisting of Des Moines, Montrose, Keokuk, and Jackson townships in Lee county.

(6) The natural gas competitive service area consisting of the city of Allerton and the area within two miles of the city limits.

(7) The natural gas competitive service area consisting of all of Iowa not contained in any of the other natural gas competitive service areas described in this paragraph.

b. "Township" includes any city or part of a city located within the exterior boundaries of that township.

c. References to city limits contained in this subsection mean those city limits as they existed on January 1, 1999.

22. "Operating property" means all property owned by or leased to an electric company, electric cooperative, municipal utility, or natural gas company, not otherwise taxed separately, which is necessary to and without which the company could not perform the activities of an electric company, electric cooperative, municipal utility, or natural gas company.

23. "Pole miles" means miles measured along the line of poles, structures, or towers carrying electric conductors regardless of the number of conductors or circuits carried, and miles of conduit bank, regardless of number of conduits or ducts, of all sizes and types, including manholes and handholes. "Conduit bank" means a length of one or more underground conduits or ducts, whether or not enclosed in concrete, designed to contain underground cables, including a gallery or cable tunnel for power cables.

24. "Purchasing member" means a municipal utility which purchases electricity from a municipal electric cooperative association of which it is a member.

25. "Replacement tax" means the excise tax imposed on the generation, transmission, delivery, consumption, or use of electricity or natural gas under section 437A.4, 437A.5, 437A.6, or 437A.7.

26. "Self-generator" means a person, other than an electric company, natural gas company, electric cooperative, or municipal utility, who generates, by means of an on-site facility wholly owned by or leased in its entirety to such person, electricity solely for its own consumption, except for inadvertent unscheduled deliveries to the electric utility furnishing electric service to that self-generator. A person who generates electricity which is consumed by any other person, including any owner, shareholder, member, beneficiary, partner, or associate of the person who generates electricity, is not a self-generator. For purposes of this subsection, "on-site facility" means an electric power generating plant that is wholly owned by or

leased in its entirety to a person and used to generate electricity solely for consumption by such person on the same parcel of land on which such plant is located or on a contiguous parcel of land. For purposes of this subsection, "parcel of land" includes each separate parcel of land shown on the tax list.

27. "Statewide amount" means the acquisition cost of any major addition which is not a local amount.

28. "Taxpayer" means an electric company, natural gas company, electric cooperative, municipal utility, or other person subject to the replacement tax imposed under section 437A.4, 437A.5, 437A.6, or 437A.7.

29. "Tax year" means a calendar year beginning January 1 and ending December 31.

30. "Transfer replacement tax" means the excise tax imposed in a competitive service area of a municipal utility which replaces transfers made by the municipal utility in accordance with section 384.89.

31. "Transmission line" means a line, wire, or cable which is capable of operating at an electric voltage of at least thirty-four and one-half kilovolts.

32. "Utilities board" means the utilities board created in section 474.1.

2001 Acts, ch 145, §1, 2, 13; 2001 Acts, 1st Ex, ch 4, §5, 36
2001 amendment to subsection 1, unnumbered paragraph 1, applies to tax years commencing on or after January 1, 2001; 2001 Acts, ch 145, §13
Subsection 1, unnumbered paragraph 1 amended
Subsection 17, paragraphs b and d amended

437A.6 Replacement tax imposed on electric generation.

1. A replacement generation tax of six hundredths of a cent per kilowatt-hour of electricity generated within this state during the tax year is imposed on every person generating electricity, except electricity generated by the following:

a. A low capacity factor electric power generating plant.

b. Facilities owned by or leased to a municipal utility when devoted to public use and not held for pecuniary profit, except facilities of a municipally owned electric utility held under joint ownership or lease and facilities of an electric power facility financed under chapter 28F or 476A.

c. Wind energy conversion property subject to section 427B.26.

d. Methane gas conversion property subject to section 427.1, subsection 29.

e. Facilities owned by or leased to a state university or university of science and technology, to the extent electricity generated by such facilities is consumed exclusively by such state university or university of science and technology.

f. On-site facilities wholly owned by or leased in their entirety to a self-generator.

2. In lieu of the replacement generation tax imposed in subsection 1, a replacement generation tax of one thousand eight hundred forty-seven ten-

thousandths of a cent per kilowatt-hour of electricity generated within this state during the tax year is imposed on every hydroelectric generating power plant with a generating capacity of one hundred megawatts or greater.

3. In lieu of the replacement generation tax imposed in subsection 1, a replacement generation tax of one thousand ninety-nine ten-thousandths of a cent per kilowatt-hour of electricity generated within this state during the tax year is imposed on every electric company which owns a joint interest in an electric power generating plant in this state and which has a joint interest in less than five pole miles of transmission lines in this state.

4. For purposes of this section, if a generation facility is jointly owned or leased, the number of kilowatt-hours of electricity subject to the replacement generation tax shall be the number of kilowatt-hours of electricity generated and dispatched by the jointly held generation facility to the account of the taxpayer.

5. For purposes of this section, the number of kilowatt-hours generated by a generation facility shall exclude any kilowatt-hours used to operate that generation facility.

2001 Acts, ch 145, §3, 13; 2001 Acts, 1st Ex, ch 4, §6, 36
Recomputation of electric replacement delivery tax rate; 2000 Acts, ch 1114, §16

2000 amendments to subsections 4 and 5 take effect April 19, 2000, and apply retroactively to tax years beginning on and after January 1, 1999; 2000 Acts, ch 1114, §17, 18

2001 amendments adding new subsections 2 and 3 apply to tax years commencing on or after January 1, 2001; 2001 Acts, ch 145, §13

Subsection 1, paragraph b amended

NEW subsections 2 and 3 and former subsections 2 and 3 renumbered as 4 and 5

437A.7 Replacement tax imposed on electric transmission.

1. A replacement transmission tax is imposed on every person owning or leasing transmission lines within this state and shall be equal to the sum of all of the following:

a. Five hundred fifty dollars per pole mile of transmission line owned or leased by the taxpayer not exceeding one hundred kilovolts.

b. Three thousand dollars per pole mile of transmission line owned or leased by the taxpayer greater than one hundred kilovolts but not exceeding one hundred fifty kilovolts.

c. Seven hundred dollars per pole mile of transmission line owned or leased by the taxpayer greater than one hundred fifty kilovolts but not exceeding three hundred kilovolts.

d. Seven thousand dollars per pole mile of transmission line owned or leased by the taxpayer greater than three hundred kilovolts.

The replacement transmission tax shall be calculated on the basis of pole miles of transmission line owned or leased by the taxpayer on the last day of the tax year.

2. The following shall not be subject to the replacement transmission tax:

a. Transmission lines owned by or leased to a

municipal utility when devoted to public use and not for pecuniary profit, except transmission lines of a municipally owned electric utility held under joint ownership and transmission lines of an electric power facility financed under chapter 28F or 476A.

b. Transmission lines owned by or leased to a lessor when the transmission lines are subject to the replacement transmission tax payable by the lessee or sublessee.

c. Any electric cooperative which owns, leases, or owns and leases in total less than seven hundred fifty pole miles of transmission lines in this state. Chapter 437 shall apply to such electric cooperatives.

d. Transmission lines owned by or leased to a state university or university of science and technology, provided such transmission lines are used exclusively for the transmission of electricity consumed by such state university or university of science and technology.

e. Transmission lines owned by or leased to a person, other than a public utility, for which a franchise is not required under chapter 478.

3. For purposes of this section, if a transmission line is jointly owned or leased, the taxpayer shall compute the number of pole miles subject to the replacement transmission tax by multiplying the taxpayer's percentage interest in the jointly held transmission lines by the number of pole miles of such lines.

2001 Acts, ch 145, §4, 13; 2001 Acts, 1st Ex, ch 4, §7, 36

2001 amendment to subsection 2, paragraph c, applies to tax and assessment years commencing on or after January 1, 2001; 2001 Acts, ch 145, §13
Subsection 2, paragraphs a and c amended

437A.8 Return and payment requirements — rate adjustments.

1. Each taxpayer, on or before March 31 following a tax year, shall file with the director a return including, but not limited to, the following information:

a. The total taxable kilowatt-hours of electricity delivered by the taxpayer to consumers within each electric competitive service area during the tax year, and the total taxable therms of natural gas delivered by the taxpayer to consumers within each natural gas competitive service area during the tax year.

b. The total kilowatt-hours of electricity consumed by the taxpayer within each electric competitive service area during the tax year subject to tax under section 437A.4, subsection 2, and the total therms of natural gas consumed by the taxpayer within each natural gas competitive service area during the tax year subject to tax under section 437A.5, subsection 2.

c. The total taxable kilowatt-hours of electricity generated by the taxpayer in Iowa during the tax year.

d. The total taxable pole miles of electric transmission lines in Iowa, by kilovolt, owned or

leased by the taxpayer on the last day of the tax year.

e. The tentative replacement taxes imposed by section 437A.4, subsection 1, paragraph “a”, section 437A.4, subsection 2, section 437A.5, subsection 1, paragraph “a”, section 437A.5, subsection 2, and sections 437A.6 and 437A.7, due for the tax year.

f. For purposes of a municipal utility which is a member of a municipal electric cooperative association, the occurrence on or before September 1 of the preceding calendar year of an event described in section 437A.4, subsection 9, paragraph “a” or “b”, and the date on which the one-hundred-eighty-day requirement under such paragraph was met.

2. Each taxpayer subject to a municipal transfer replacement tax, on or before March 31 following a tax year, shall file with the chief financial officer of each city located within an electric or natural gas competitive service area served by a municipal utility as of January 1, 1999, a return including, but not limited to, the following information:

a. The total taxable kilowatt-hours of electricity delivered by the taxpayer within each electric competitive service area described in section 437A.4, subsection 4, during the tax year and the total taxable therms of natural gas delivered by the taxpayer within each natural gas competitive service area described in section 437A.5, subsection 4, during the tax year.

b. For a municipal utility taxpayer, the total transfers made by the taxpayer under section 384.89 within each competitive service area during the preceding calendar year, allocated between electric-related transfers and natural gas-related transfers and total credits described in sections 437A.4, subsection 5, and 437A.5, subsection 5.

c. The transfer replacement taxes imposed by sections 437A.4, subsection 1, paragraph “b”, and 437A.5, subsection 1, paragraph “b”, due for the tax year.

3. A return shall be signed by an officer, or other person duly authorized by the taxpayer, and must be certified as correct and in accordance with forms and rules prescribed by the director in the case of a return filed pursuant to subsection 1, and in accordance with forms and rules prescribed by the chief financial officer of the city in the case of a return filed pursuant to subsection 2.

4. a. At the time of filing the return required by subsection 1 with the director, the taxpayer shall calculate the tentative replacement tax due for the tax year. The director shall compute any adjustments to the replacement tax required by subsection 7 and by section 437A.4, subsection 8, and section 437A.5, subsection 8, and notify the taxpayer of any such adjustments in accordance with the requirements of such provisions. The director and the department of management shall compute the allocation of replacement taxes among local taxing districts and report such al-

locations to county treasurers pursuant to section 437A.15. Based on such allocations, the treasurer of each county shall notify each taxpayer on or before August 31 following a tax year of its replacement tax obligation to the county treasurer. On or before September 30, 2000, and on or before September 30 of each subsequent year, the taxpayer shall remit to the county treasurer of each county to which such replacement tax is allocated pursuant to section 437A.15, one-half of the replacement tax so allocated, and on or before the succeeding March 31, the taxpayer shall remit to the county treasurers the remaining replacement tax so allocated. If notification of a taxpayer's replacement tax obligation is not mailed by a county treasurer on or before August 31 following a tax year, such taxpayer shall have thirty days from the date the notification is mailed to remit one-half of the replacement tax otherwise required by this subsection to be remitted to such county treasurer on or before September 30. If a taxpayer fails to timely remit replacement taxes as provided in this subsection, the county treasurer of each affected county shall notify the director of such failure.

b. If a distribution electric cooperative member or a municipal utility purchasing member subject to section 437A.15, subsection 3, paragraph “b”, does not make timely payment of the correct amount of replacement tax to the generation and transmission electric cooperative, the generation and transmission electric cooperative shall notify the director in writing within ten days after September 10. The director shall then notify the generation and transmission electric cooperative in writing within five days after delivery of notice to the director of the paid amount to be remitted to the appropriate county treasurer and shall also notify the county treasurer. The generation and transmission electric cooperative shall remit the amount determined by the director to the appropriate county treasurer by September 30. If the generation and transmission electric cooperative timely notifies the director and timely remits to the county treasurer the amounts of replacement tax, as determined by the director, the generation and transmission electric cooperative shall not be liable for that unpaid replacement tax due from the distribution electric cooperative member or municipal utility purchasing member. The generation and transmission electric cooperative shall also not be liable for a special utility property tax levy, if any, and shall not be entitled to a tax credit, if any, attributable to the unpaid replacement tax. The county treasurer and the director shall enforce payment of the replacement tax against the appropriate distribution electric cooperative member or municipal utility purchasing member pursuant to sections 437A.9 through 437A.13. The county treasurer shall enforce payment of the special utility property tax levy, if any, against the appropriate distribution electric coop-

erative member or municipal utility purchasing member. For purposes of this paragraph:

(1) Written notice to the director must be either delivered to the director by electronic means, United States postal service, or a common carrier, by ordinary, certified, or registered mail directed to the attention of the director, be personally delivered to the director, or be served on the director by personal service during business hours. If the notice is mailed, a notice is considered delivered on the date of the postmark. If a postmark date is not present on the mailed article, the date of receipt of notice shall be considered the date of the mailing. A notice is considered delivered on the date personal service or personal delivery to the office of the director is made.

(2) Written notice to a generation and transmission electric cooperative must be delivered to the cooperative by electronic means, United States postal service, or a common carrier, by ordinary, certified, or registered mail, directed to the attention of the manager of the cooperative, be personally delivered to the manager of the cooperative, or be served on the manager of the cooperative by personal service during business hours. For the purpose of mailing, a notice is considered delivered on the date of the postmark. If a postmark date is not present on the mailed article, the date of receipt of notice shall be considered the date of the mailing. A notice is considered delivered on the date personal service or personal delivery to the office of the manager of the cooperative is made.

c. If a generation and transmission electric cooperative, after notice, does not timely pay the correct amount of replacement tax or special utility property tax levy attributable to the excess property tax liability to the appropriate county treasurer, after receiving the required payment from the distribution electric cooperative member or municipal utility purchasing member, such replacement tax shall be enforced solely against the generation and transmission electric cooperative under sections 437A.9 through 437A.13, and shall not be enforced against the paying distribution electric cooperative member or municipal utility purchasing member, and the special utility property tax levy shall be enforced solely against the generation and transmission electric cooperative.

5. At the time of filing the return required by subsection 2, the taxpayer shall calculate the municipal transfer replacement tax due for the tax year. Municipal transfer replacement taxes shall be paid to the chief financial officer of the city to which the taxes are allocated at such time and place as directed by the city council.

6. Notwithstanding subsections 1 through 5, a taxpayer shall not be required to file a return otherwise required by this section or remit any replacement tax for any tax year in which the taxpayer's replacement tax liability before credits is

three hundred dollars or less, provided that all electric companies, electric cooperatives, municipal utilities, and natural gas companies shall file a return, regardless of the taxpayer's replacement tax liability.

7. Following the determination of electric and natural gas delivery tax rates by the director pursuant to section 437A.4, subsection 3, and section 437A.5, subsection 3, if an adjustment resulting from a taxpayer appeal is made to taxes levied and paid by a taxpayer with respect to any of the assessment years 1993 through 1997 used in determining such rates, the director shall recalculate the delivery tax rate for any affected electric or natural gas competitive service area to reflect the impact of such adjustment as if such adjustment had been reflected in the initial determination of average centrally assessed property tax liability allocated to electric or natural gas service pursuant to section 437A.4, subsection 3, paragraph "a", and section 437A.5, subsection 3, paragraph "a". Rate recalculations shall be made and published in the Iowa administrative bulletin by the director on or before March 31 following the calendar year in which a final determination of the adjustment is made. Taxpayers shall report to the director any increase or decrease in the tentative replacement tax required to be shown to be due pursuant to subsection 1, paragraph "e", for any tax year with the return for the year in which the recalculated tax rates which gave rise to the adjustment are published in the Iowa administrative bulletin. The director and the department of management shall redetermine the allocation of replacement taxes pursuant to section 437A.15 for each affected tax year. If a taxpayer has overpaid replacement taxes, the overpayment shall be reported by the director to such taxpayer and to the appropriate county treasurers and shall be a credit against the replacement taxes owed by such taxpayer for the year in which the recalculated rates which gave rise to the overpayment are published in the Iowa administrative bulletin. If a taxpayer has overpaid centrally assessed property taxes for assessment years prior to tax year 1999, such overpayment shall be a credit against replacement taxes owed by such taxpayer for the year in which the overpayment is determined. Unused credits may be carried forward and used to reduce future replacement tax liabilities until exhausted.

2001 Acts, ch 145, §5 - 8, 13

2001 amendments to subsections 1 and 2 apply for returns due for tax years commencing on or after January 1, 2001; 2001 Acts, ch 145, §13

Subsection 1, unnumbered paragraph 1 amended

Subsection 2, unnumbered paragraph 1 amended

Subsection 4, unnumbered paragraph 1 redesignated as paragraph a

Subsection 4, unnumbered paragraphs 2 and 3 amended and redesignated as paragraph b and subparagraphs (1) and (2)

Subsection 4, unnumbered paragraph 4 redesignated as paragraph c

Subsection 6 amended

437A.11 Lien — actions authorized.

Whenever a taxpayer who is liable to pay a tax imposed by subchapter II refuses or neglects to

pay such tax, the amount, including any interest, penalty, or addition to such tax, together with the costs that may accrue, shall be a lien in favor of the chief financial officer of the city or the county treasurer to which the tax is owed upon all property and rights to property, whether real or personal, belonging to the taxpayer. The lien shall be prior to and superior over all subsequent liens upon any personal property within this state, or right to such personal property, belonging to the taxpayer, without the necessity of recording the lien. The requirement for recording, as applied to the tax imposed by subchapter II, shall apply only to a lien upon real property. The lien may be preserved against subsequent mortgagees, purchasers, or judgment creditors, for value and without notice of the lien, on any real property situated in a county, by the county treasurer to which replacement tax is owed by filing with the recorder of the county in which the real property is located a notice of the lien. For purposes of the replacement tax collected by a city, the lien may be preserved against subsequent mortgagees, purchasers, or judgment creditors, for value and without notice of the lien, on any real property situated in the county, by the chief financial officer of the city to which replacement tax is owed by filing with the recorder of the county in which the real property is located a notice of the lien.

The county recorder of each county shall prepare and keep in the recorder's office an index and record to show, under the names of taxpayers arranged alphabetically, all of the following:

1. The name of the taxpayer.
2. The name of the county treasurer and county or the name of the chief financial officer and city as claimant.
3. Time the notice of lien was received.
4. Date of notice.
5. Amount of lien then due.
6. Date of assessment.
7. Date when the lien is satisfied.

The recorder shall endorse on each notice of lien the day, hour, and minute when received and preserve such notice, and shall promptly record the lien in the manner provided for recording real estate mortgages. The lien is effective from the time of the indexing of the lien.

The county treasurer or chief financial officer of the city shall pay a recording fee as provided in section 331.604, for the recording of the lien, or for its satisfaction.

Upon the payment of the replacement tax as to which a county treasurer or chief financial officer of a city has filed notice with a county recorder, the county treasurer or chief financial officer of the city shall promptly file with the recorder a satisfaction of the replacement tax. The recorder shall enter the satisfaction on the notice on file in the recorder's office and indicate that fact on the index.

Section 445.3 applies with respect to the replacement taxes and special utility property tax

levies and penalties and interest imposed by this chapter, except for the provisions limiting the commencement of actions. In addition, at the county treasurer's discretion, chapters 446, 447, and 448 apply in the enforcement of the special utility property tax levies, but any tax deed issued shall not extinguish a tax lien or judgment lien for replacement taxes that has attached to the property.

2001 Acts, ch 44, §20
Unnumbered paragraph 2 amended

437A.15 Allocation of revenue.

1. The director and the department of management shall compute the allocation of all replacement tax revenues other than transfer replacement tax revenues among the local taxing districts in accordance with this section and shall report such allocation by local taxing districts to the county treasurers on or before August 15 following a tax year.

2. The director shall determine and report to the department of management the total replacement taxes to be collected from each taxpayer for the tax year on or before July 30 following such tax year.

3. *a.* All replacement taxes owed by a taxpayer shall be allocated among the local taxing districts in which such taxpayer's property is located in accordance with a general allocation formula determined by the department of management on the basis of general property tax equivalents. General property tax equivalents shall be determined by applying the levy rates reported by each local taxing district to the department of management on or before June 30 following a tax year to the assessed value of taxpayer property allocated to each such local taxing district as adjusted and reported to the department of management in such tax year by the director pursuant to section 437A.19, subsection 2. The general allocation formula for a tax year shall allocate to each local taxing district that portion of the replacement taxes owed by each taxpayer which bears the same ratio as such taxpayer's general property tax equivalents for each local taxing district bears to such taxpayer's total general property tax equivalents for all local taxing districts in Iowa.

b. Notwithstanding other provisions of this section, if excess property tax liability has been assigned pursuant to section 437A.4, subsection 3, paragraph "c", subparagraph (4), and has not been removed, the allocation of electric delivery replacement tax attributable to the excess property tax liability shall be made by the director and the department of management so as to allocate the electric delivery replacement tax attributable to the excess property tax liability among those local taxing districts in which the property associated with the excess property tax liability is located. In order to ensure that the electric delivery replacement tax attributable to the excess property tax liability is paid to the appropriate county treasurer

for disposition to the local taxing districts, each distribution electric cooperative member and each municipal utility purchasing member subject to section 437A.4, subsection 3, paragraph “c”, subparagraph (4), shall pay to the appropriate generation and transmission electric cooperative the electric delivery replacement tax attributable to the excess property tax liability by September 10. The amount of electric delivery replacement tax attributable to the excess property tax liability shall equal that percentage of total electric delivery replacement tax liability that the excess property tax liability bears to the total property tax liability contained in the electric delivery tax component. The generation and transmission electric cooperative shall pay the electric delivery replacement tax attributable to the excess property tax liability to the appropriate county treasurer.

c. If paragraph “b” is applicable, on or before August 1, the director shall notify each distribution electric cooperative member, each municipal utility purchasing member, and each generation and transmission electric cooperative of the amount of electric delivery replacement tax to pay to the generation and transmission electric cooperative. On or before August 1, the director shall notify the generation and transmission electric cooperative of the amount of replacement tax liability attributable to the excess property tax liability that is payable to each county treasurer. The director shall determine the amount of any special utility property tax levy or tax credit attributable to the excess property tax liability which shall be reflected in the amount required to be paid by each distribution electric cooperative member and each municipal utility purchasing member to the generation and transmission electric cooperative.

d. If, during the tax year, a taxpayer transferred operating property or an interest in operating property to another taxpayer, the transferee taxpayer’s replacement tax associated with that property shall be allocated, for the tax year in which the transfer occurred, under this section in accordance with the general allocation formula on the basis of the general property tax equivalents of the transferor taxpayer.

e. Notwithstanding the provisions of this section, if during the tax year a person who was not a taxpayer during the prior tax year acquires a new major addition, as defined in section 437A.3, subsection 17, paragraph “d”, the replacement tax associated with that major addition shall be allocated, for that tax year, under this section in accordance with the general allocating formula on the basis of the general property tax equivalents established under section 437A.15, except that the levy rates established and reported to the department of management on or before June 30 following the tax year in which the major addition was acquired shall be applied to the prorated assessed value of the major addition and provided that section 437A.19, subsection 2, paragraph “b”, sub-

paragraph (2), is in any event applicable. For purposes of this paragraph, “*prorated assessed value of the major addition*” means the assessed value of the major addition as of January 1 of the year following the tax year in which the major addition was acquired multiplied by the percentage derived by dividing the number of months that the major addition existed during the tax year by twelve, counting any portion of a month as a full month.

4. On or before August 31 following tax years 1999, 2000, and 2001, each county treasurer shall compute a special utility property tax levy or tax credit for each taxpayer for which a replacement tax liability for each such tax year is reported to the county treasurer pursuant to subsection 1, and shall notify the taxpayer of the amount of such tax levy or tax credit. The amount of the special utility property tax levy or credit shall be determined for each taxpayer by the county treasurer by comparing the taxpayer’s total replacement tax liability allocated to taxing districts in the county pursuant to this section with the anticipated tax revenues from the taxpayer for all taxing districts in the county. If the taxpayer’s total replacement tax liability allocated to taxing districts in the county is less than the anticipated tax revenues from the taxpayer for all taxing districts in the county, the county treasurer shall levy a special utility property tax equal to the shortfall which shall be added to and collected with the replacement tax owed by the taxpayer to the county treasurer for the tax year pursuant to section 437A.8, subsection 4. If the taxpayer’s total replacement tax liability allocated to taxing districts in the county exceeds the anticipated tax revenues from the taxpayer for all taxing districts in the county, the county treasurer shall issue a credit to the taxpayer which shall be applied to reduce the taxpayer’s replacement tax liability to the county treasurer for the tax year. If the taxpayer’s total replacement tax liability allocated to taxing districts in the county equals the anticipated tax revenues from the taxpayer for all taxing districts in the county, no levy or credit is required. Replacement tax liability for purposes of this subsection means replacement tax liability before credits allowed by section 437A.8, subsection 7. A recalculation of a special utility property tax levy or credit shall not be made as a result of a subsequent recalculation of replacement tax liability under section 437A.8, subsection 7, or adjustment to assessed value under section 437A.19, subsection 2, paragraph “f”. “*Anticipated tax revenues from a taxpayer*” means the product of the total levy rates imposed by the taxing districts and the value of taxpayer property allocated to the taxing districts and reported to the county auditor. Special utility property tax levies and credits shall be treated as replacement taxes for purposes of section 437A.11. If a special utility property tax levy payment becomes delinquent, the delinquent payment shall accrue interest and penalty in the same manner and amount as the replacement tax

under section 437A.13.

It is the intent of the general assembly that the general assembly evaluate the impact of the imposition of the replacement tax for purposes of determining whether this subsection shall remain in effect and whether a determination shall be made as to the necessity of a recalculation as provided in this subsection for tax years beginning after tax year 2000.

5. The replacement tax, as adjusted by any special utility property tax levy or credit and remitted to a county treasurer by each taxpayer, shall be treated as a property tax when received and shall be disposed of by the county treasurer as taxes on real estate. Notwithstanding the allocation provisions of this section, nothing in this section shall deny any affected taxing entity, as defined in section 403.17, subsection 1, which has enacted an ordinance or entered into an agreement for the division and allocation of taxes authorized under section 403.19 and under which ordinance or agreement the taxes collected in respect of properties owned by any of the taxpayers remitting replacement taxes pursuant to the provisions of this chapter are being divided and allocated, the right to receive its share of the replacement tax revenues collected for any year which would otherwise be paid to such affected taxing entity under the terms of any such ordinance or agreement had this chapter not been enacted. To the extent that adjustment must be made to the allocation described in this section to give effect to the terms of such ordinances or agreements, the department of management and the county treasurer shall make such adjustments.

6. In lieu of the adjustment provided for in subsection 5, the assessed value of property described in section 403.19, subsection 1, may be reduced by the city or county by the amount of the taxable value of the property described in section 437A.16 included in such area on January 1, 1997, pursuant to amendment of the ordinance adopted by such city or county pursuant to section 403.19.

7. On or before July 1, 1998, the department of management, in consultation with the department of revenue and finance, shall initiate and coordinate the establishment of a task force and provide staffing assistance to the task force. It is the intent of the general assembly that the task force include representatives of the department of management, department of revenue and finance, electric companies, natural gas companies, municipal utilities, electric cooperatives, counties, cities, school boards, and industrial, commercial, and residential consumers, and other appropriate stakeholders.

The task force shall study the effects of the replacement tax on local taxing authorities, local taxing districts, consumers, and taxpayers and the department of management shall report to the general assembly by January 1 of each year through January 1, 2003, the results of the study

and the specific recommendations of the task force for modifications to the replacement tax, if any, which will further the purposes of tax neutrality for local taxing authorities, local taxing districts, taxpayers, and consumers, consistent with the stated purposes of this chapter. The department of management shall also report to the legislative council by November 15 of each year through 2002, the status of the task force study and any recommendations.

2001 Acts, ch 145, §9
Subsection 3 amended

437A.19 Adjustment to assessed value — reporting requirements.

1. *a.* A taxpayer whose property is subject to the statewide property tax shall report to the director by July 1, 1999, and by May 1 of each subsequent tax year, on forms prescribed by the director, the book value, as of the beginning and end of the preceding calendar year, of all of the following:

(1) The local amount of any major addition by local taxing district.

(2) The statewide amount of any major addition without notation of location.

(3) Any building in Iowa at acquisition cost of more than ten million dollars which was originally placed in service by the taxpayer prior to January 1, 1998, and which was transferred or disposed of in the preceding calendar year, without notation of location.

(4) Any electric power generating plant in Iowa at acquisition cost of more than ten million dollars which was originally placed in service by the taxpayer prior to January 1, 1998, and which was transferred or disposed of in the preceding calendar year, without notation of location.

(5) All other taxpayer property without notation of location.

(6) The local amount of any major addition eligible for the urban revitalization exemption provided for in chapter 404, by situs.

b. For purposes of this section:

(1) “*Book value*” means acquisition cost less accumulated depreciation determined under generally accepted accounting principles.

(2) “*Taxpayer property*” means property described in section 437A.16.

(3) “*To dispose of*” means to sell, abandon, de-commission, or retire an asset.

(4) “*Transfer*” means a transaction which results in a change of ownership of taxpayer property and includes a capital lease transaction.

c. For purposes of this subsection, “*taxpayer*” includes a person who would have been a taxpayer in calendar year 1998 had the provisions of this chapter been in effect for the 1998 assessment year.

d. If a taxpayer owns or leases pursuant to a capital lease less than the entire interest in a major addition, the local amount and statewide amount, if any, of such major addition shall be ap-

portioned to the taxpayer on the basis of its percentage interest in such major addition.

2. Beginning January 1, 1999, the assessed value of taxpayer property shall be adjusted annually as provided in this section. The director, with respect to each taxpayer, shall do all of the following:

a. Adjust the assessed value of taxpayer property in each local taxing district by the change in book value during the preceding calendar year of the local amount of any major addition reported within such local taxing district.

b. (1) Adjust the assessed value of taxpayer property in each local taxing district by allocating the change in book value during the preceding calendar year of the statewide amount and all other taxpayer property described in subsection 1, paragraph "a", subparagraph (5), to the assessed value of all taxpayer property in the state pro rata according to its preadjustment value.

(2) If, during the preceding calendar year, a taxpayer transferred an electric power generating plant or an interest in an electric power generating plant to a taxpayer who owned no other taxpayer property in this state as of the end of such preceding calendar year, in lieu of the adjustment provided in subparagraph (1), the director shall allocate the transferee taxpayer's change in book value of the statewide amount during such preceding calendar year, if any, among local taxing districts in proportion to the allocation of the transferor's assessed value among local taxing districts as of the end of such preceding calendar year.

c. In the case of taxpayer property described in subsection 1, paragraph "a", subparagraphs (3) and (4), decrease the assessed value of taxpayer property in each local taxing district by the taxable value of such property within each such local taxing district on January 1, 1998.

d. In the event of a merger or consolidation of two or more taxpayers, to determine the assessed value of the surviving taxpayer, combine the assessed values of such taxpayers immediately prior to the merger or consolidation.

e. In the event any taxpayer property is eligible for the urban revitalization tax exemption described in chapter 404, adjust the assessed value of taxpayer property within each affected local taxing district to reflect such exemption.

f. In the event the base year assessed value of taxpayer property is adjusted as a result of taxpayer appeals, reduce the assessed value of taxpayer property in each local taxing district to reflect such adjustment. The adjustment shall be allocated in proportion to the allocation of the taxpayer's assessed value among the local taxing districts determined without regard to this adjustment. If an adjustment to the base year assessed value of taxpayer property is finally determined on or before September 30, 1999, it shall be reflected in the January 1, 1999, assessed value. Otherwise, any such adjustment shall be made as

of January 1 of the year following the date on which the adjustment is finally determined.

In no event shall the adjustments set forth in this subsection reduce the assessed value of taxpayer property in any local taxing district below zero.

The director, on or before October 31, 1999, in the case of January 1, 1999, assessed values, and on or before August 31 of each subsequent assessment year, shall report to the department of management and to the auditor of each county the adjusted assessed value of taxpayer property as of January 1 of such assessment year for each local taxing district, provided that for a taxpayer whose base year as defined in section 437A.3, subsection 1, changed from 1997 to 1998, the director shall, before May 1, 2000, report to the department of management and to the auditor of each county, the assessed values as of January 1, 1999. For purposes of this subsection, the assessed value of taxpayer property in each local taxing district subject to adjustment under this section by the director means the assessed value of such property as of the preceding January 1 as determined and allocated among the local taxing districts by the director.

Nothing in this chapter shall be interpreted to authorize local taxing authorities to exclude from the calculation of levy rates the adjusted assessed value of taxpayer property reported to county auditors pursuant to this subsection.

2001 Acts, ch 145, §10
Subsection 2, paragraph b, subparagraph (2) amended

437A.21 Return and payment requirements.

1. Each electric company, natural gas company, electric cooperative, municipal utility, and other person whose property is subject to the statewide property tax shall file with the director a return, on or before March 31 following the assessment year, including, but not limited to, the following information:

a. The assessed value of property subject to the statewide property tax.

b. The amount of statewide property tax computed on such assessed value.

2. The first return under subsection 1 is due on or before February 28, 2000.

3. If an electric company, natural gas company, electric cooperative, municipal utility, or person is not required to file a statewide property tax return on or before February 28, 2000, but is required to file a return after such date, the return shall be filed on or before the due date. This subsection also applies in the event of a consolidation.

4. A return shall be signed by an officer, or other person duly authorized by the taxpayer, and must be certified as correct and in accordance with rules and forms prescribed by the director.

5. At the time of filing the return with the director, the taxpayer shall calculate the statewide

property tax owed for the assessment year and shall remit to the director the statewide property tax required to be shown to be due on the return.

6. Notwithstanding subsections 1 through 5, a taxpayer is not required to file a return under this section or to remit any statewide property tax for any tax year in which the taxpayer's statewide property tax liability is one dollar or less.

2001 Acts, ch 145, §11, 13

2001 amendment to subsection 1 applies for returns due for assessment years commencing on or after January 1, 2001; 2001 Acts, ch 145, §13

Subsection 1, unnumbered paragraph 1 amended

437A.22 Statutes applicable.

Sections 437A.9, 437A.10, 437A.12, 437A.13, and 437A.14, subsection 1, are applicable to electric companies, natural gas companies, electric cooperatives, municipal utilities, and persons whose property is subject to the statewide property tax. However, a required credit or refund of overpaid statewide property tax pursuant to section 437A.14, subsection 1, as it applies to this subchapter, shall be made by the director and not by city chief financial officers or county treasurers.

Section 422.26 applies with respect to the statewide property tax and penalties imposed by this chapter, except that, as applied to any tax imposed by this chapter, the lien provided shall be prior to and superior over all subsequent liens upon any personal property within this state or right to such personal property belonging to the taxpayer, without the necessity of recording the lien as provided in section 422.26. The requirement for recording, as applied to the statewide property tax imposed by this chapter, shall apply only to a lien upon real property. In order to preserve such lien against subsequent mortgagees, purchasers, or judgment creditors, for value and without notice of the lien, on any real property situated in a county, the director shall file with the recorder of the county in which the real property is located a notice of the lien.

The county recorder of each county shall prepare and keep in the recorder's office an index and record to show, under the names of taxpayers arranged alphabetically, all of the following:

1. The name of the taxpayer.
2. The name "State of Iowa" as claimant.
3. Time the notice of lien was received.
4. Date of notice.
5. Amount of lien then due.
6. Date of assessment.
7. Date when the lien is satisfied.

The recorder shall endorse on each notice of lien the day, hour, and minute when received and preserve such notice, and shall promptly record the lien in the manner provided for recording real estate mortgages. The lien is effective from the time of the indexing of the lien.

The director, from moneys appropriated to the department of revenue and finance for this purpose, shall pay a recording fee as provided in section 331.604 for the recording of the lien, or for its satisfaction.

Upon the payment of the replacement tax as to which the director has filed notice with a county recorder, the director shall promptly file with the recorder a satisfaction of the replacement tax. The recorder shall enter the satisfaction on the notice on file in the recorder's office and indicate that fact on the index.

2001 Acts, ch 44, §21

Unnumbered paragraph 3 amended

437A.24 Records.

Each electric company, natural gas company, electric cooperative, municipal utility, and other person who is subject to the replacement tax or the statewide property tax shall maintain records associated with the replacement tax and the assessed value of property subject to the statewide property tax for a period of five years following the later of the original due date for filing a return pursuant to sections 437A.8 and 437A.21 in which such taxes are reported, or the date on which either such return is filed. Such records shall include those associated with any additions or dispositions of property, and the allocation of such property among local taxing districts.

2001 Acts, ch 145, §12

Section amended

CHAPTER 441

ASSESSMENT AND VALUATION OF PROPERTY

441.17 Duties of assessor.

The assessor shall:

1. Devote full time to the duties of the assessor's office and shall not engage in any occupation or business interfering or inconsistent with such duties.

2. Cause to be assessed, in accordance with section 441.21, all the property in the assessor's county or city, except property exempt from tax-

tion, or the assessment of which is otherwise provided for by law.

3. Have access to all public records of the county and, so far as practicable, make or cause to be made a careful examination of all such records and files in order to obtain all available information which may contribute to the accurate listing at its taxable value, and to the proper persons, of all property subject to assessment by the assessor.

4. Cooperate with the director of revenue and finance as may be necessary or required, and obey and execute all orders, directions, and instructions of the director of revenue and finance, insofar as the same may be required by law.

5. Have power to apply to the district court of the county for an order to examine witnesses and requiring the production of books and records of any person, firm, association or corporation within the county, whenever the assessor has reason to believe that such person, firm, association or corporation has not listed property as provided by law. The proceeding for the examination of witnesses and examination of the books and records of any such taxpayer, to determine the existence of taxable property, shall be instituted and conducted in the manner provided for the discovery of property under the provisions of chapter 630. The court shall make an appropriate finding as to the existence of taxable property not listed. All taxable property discovered thereby shall thereupon be assessed by the assessor in the manner provided by law.

In all cases where the court finds that the taxpayer has not listed the taxpayer's property, as provided by law, and in all hearings where the court decides a matter against the taxpayer, the costs shall be paid by the taxpayer, otherwise they shall be paid out of the assessment expense fund. The fees and mileage to be paid witnesses shall be the same as prescribed by law in proceedings in the district courts of this state in civil cases. Where the costs are taxed to the taxpayer they shall be added to the taxes assessed against said taxpayer and the taxpayer's property and shall be collected in the same manner as are other taxes.

6. Make up all assessor's books and records as prescribed by the director of revenue and finance, turn the completed assessor's books and records required for the preparation of the tax list over to the county auditor each year when the board of review has concluded its hearings and the county auditor shall proceed with the preparation of the current year tax list and the assessor shall cooperate with the auditor in the preparation of the tax lists.

7. Submit on or before May 1 of each year completed assessment rolls to the board of review.

8. Lay before the board of review such information as the assessor may possess which will aid said board in performing its duties in adjusting the assessments to the valuations required by law.

9. Furnish to the director of revenue and finance any information which the assessor may have relative to the ownership of any property that may be assessable within this state, but not assessable or subject to being listed for taxation by the assessor.

10. Measure the exterior length and exterior width of all mobile homes and manufactured homes except those for which measurements are contained in the manufacturer's and importer's certificate of origin, and report the information to

the county treasurer. Check all manufactured or mobile homes for inaccuracy of measurements as necessary or upon written request of the county treasurer and report the findings immediately to the county treasurer. The assessor shall make frequent inspections and checks within the assessor jurisdiction of all manufactured or mobile homes and manufactured home communities or mobile home parks and make all the required and needed reports to carry out the purposes of this section.

11. Cause to be assessed for taxation property which the assessor believes has been erroneously exempted from taxation. Revocation of a property tax exemption shall commence with the assessment for the current assessment year, and shall not be applied to prior assessment years.

2001 Acts, ch 153, §15, 16; 2001 Acts, ch 176, §80
Terminology change applied

441.21 Actual, assessed and taxable value.

1. *a.* All property subject to taxation shall be valued at its actual value which shall be entered opposite each item, and, except as otherwise provided in this section, shall be assessed at one hundred percent of its actual value, and the value so assessed shall be taken and considered as the assessed value and taxable value of the property upon which the levy shall be made.

b. The actual value of all property subject to assessment and taxation shall be the fair and reasonable market value of such property except as otherwise provided in this section. "Market value" is defined as the fair and reasonable exchange in the year in which the property is listed and valued between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and each being familiar with all the facts relating to the particular property. Sale prices of the property or comparable property in normal transactions reflecting market value, and the probable availability or unavailability of persons interested in purchasing the property, shall be taken into consideration in arriving at its market value. In arriving at market value, sale prices of property in abnormal transactions not reflecting market value shall not be taken into account, or shall be adjusted to eliminate the effect of factors which distort market value, including but not limited to sales to immediate family of the seller, foreclosure or other forced sales, contract sales, discounted purchase transactions or purchase of adjoining land or other land to be operated as a unit.

The actual value of special purpose tooling, which is subject to assessment and taxation as real property under section 427A.1, subsection 1, paragraph "e", but which can be used only to manufacture property which is protected by one or more United States or foreign patents, shall not exceed the fair and reasonable exchange value between a willing buyer and a willing seller, assuming that the willing buyer is purchasing only the

special purpose tooling and not the patent covering the property which the special purpose tooling is designed to manufacture nor the rights to manufacture the patented property. For purposes of this paragraph, special purpose tooling includes dies, jigs, fixtures, molds, patterns, and similar property. The assessor shall not take into consideration the special value or use value to the present owner of the special purpose tooling which is designed and intended solely for the manufacture of property protected by a patent in arriving at the actual value of the special purpose tooling.

c. In assessing and determining the actual value of special purpose industrial property having an actual value of five million dollars or more, the assessor shall equalize the values of such property with the actual values of other comparable special purpose industrial property in other counties of the state. Such special purpose industrial property includes, but is not limited to chemical plants. If a variation of ten percent or more exists between the actual values of comparable industrial property having an actual value of five million dollars or more located in separate counties, the assessors of the counties shall consult with each other and with the department of revenue and finance to determine if adequate reasons exist for the variation. If no adequate reasons exist, the assessors shall make adjustments in the actual values to provide for a variation of ten percent or less. For the purposes of this paragraph, special purpose industrial property includes structures which are designed and erected for operation of a unique and special use, are not rentable in existing condition, and are incapable of conversion to ordinary commercial or industrial use except at a substantial cost.

d. Actual value of property in one assessing jurisdiction shall be equalized as compared with actual value of property in an adjoining assessing jurisdiction. If a variation of five percent or more exists between the actual values of similar, closely adjacent property in adjoining assessing jurisdictions in Iowa, the assessors thereof shall determine whether adequate reasons exist for such variation. If no such reasons exist, the assessors shall make adjustments in such actual values to reduce the variation to five percent or less.

e. The actual value of agricultural property shall be determined on the basis of productivity and net earning capacity of the property determined on the basis of its use for agricultural purposes capitalized at a rate of seven percent and applied uniformly among counties and among classes of property. Any formula or method employed to determine productivity and net earning capacity of property shall be adopted in full by rule.

f. In counties or townships in which field work on a modern soil survey has been completed since January 1, 1949, the assessor shall place emphasis upon the results of the survey in spreading the

valuation among individual parcels of such agricultural property.

g. Notwithstanding any other provision of this section, the actual value of any property shall not exceed its fair and reasonable market value, except agricultural property which shall be valued exclusively as provided in paragraph "e" of this subsection.

2. 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. However, in assessing property that is rented or leased to low-income individuals and families as authorized by section 42 of the Internal Revenue Code, as amended, and which section limits the amount that the individual or family pays for the rental or lease of units in the property, the assessor shall use the productive and earning capacity from the actual rents received as a method of appraisal and shall take into account the extent to which that use and limitation reduces the market value of the property. The assessor shall not consider any tax credit equity or other subsidized financing as income provided to the property in determining the assessed value. 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 complain-

ant 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, 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.

5. For valuations established as of January 1, 1979, commercial property and industrial property, excluding properties referred to in section 427A.1, subsection 7, 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 7, 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 7, shall be assessed shall be calculated in accordance with the methods provided herein, except that any references to six percent in this subsection shall be four percent. For valuations established as of January 1, 1981, and each year thereafter, the percentage of actual value at which property valued by the department of revenue and finance pursuant to chapters 428, 433, 436, 437, and 438 shall be assessed shall be calculated in accordance with the methods provided herein, except that any references to ten percent in this subsection shall be eight percent. Beginning with valuations established as of January 1, 1979, and each year thereafter, property valued

by the department of revenue and finance pursuant to chapter 434 shall also be assessed at a percentage of its actual value which percentage shall be equal to the percentage determined by the director of revenue and finance for commercial property, industrial property, or property valued by the department of revenue and finance pursuant to chapters 428, 433, 436, 437, and 438, whichever is lowest.

6. 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.

7. 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.

8. *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 classified as agricultural, residential, commercial, or industrial property 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.

9. 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.

10. 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 11.

11. 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.

2001 Acts, ch 119, §1
Subsection 2 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, manufactured or 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 to-

tal of all taxes, penalties, interest, costs, and fees due on a parcel.

2001 Acts, ch 153, §15; 2001 Act, ch 176, §80
Terminology change applied

445.36A Partial payments.

1. As an alternative to the semiannual or annual payment of taxes, the county treasurer may accept partial payments of taxes. A minimum payment amount shall be established by the treasurer. The treasurer shall transfer amounts from each taxpayer’s account to be applied to each semiannual tax installment prior to the delinquency dates specified in section 445.37 and the amounts collected shall be apportioned by the tenth of the month following transfer. If, prior to the due date of each semiannual installment, the account balance is insufficient to fully satisfy the installment, the treasurer shall transfer and apply the entire account balance, leaving an unpaid balance of the installment. Interest shall attach on the unpaid balance in accordance with section 445.39. Unless funds sufficient to fully satisfy the delinquency are received, the treasurer shall collect the unpaid balance as provided in sections 445.3 and 445.4 and chapter 446. Any remaining balance in a taxpayer’s account in excess of the amount needed to fully satisfy an installment shall remain in the ac-

count to be applied toward the next semiannual installment. Any interest income derived from the account shall be deposited in the county's general fund to cover administrative costs. The treasurer shall send a notice with the tax statement or by separate mail to each taxpayer stating that, upon request to the treasurer, the taxpayer may make partial payments of taxes.

2. Partial payment of taxes which are delinquent may be made to the county treasurer. A minimum payment amount shall be established by the treasurer. The minimum payment must be equal to or exceed the interest and costs attributed to the oldest delinquent installment of the tax and shall be apportioned in accordance with section 445.57. If the payment does not include the whole of any installment of the delinquent tax, the unpaid tax shall continue to accrue interest pursuant to section 445.39. Partial payment shall not be permitted in lieu of redemption if the property has been sold for taxes under chapter 446 and under any circumstances shall not constitute an extension of the time period for a sale under chapter 446.

Current year taxes may be paid at any time regardless of any outstanding prior year delinquent tax.

This section does not apply to the payment of manufactured or mobile home taxes, special assessments, or rates or charges.

2001 Acts, ch 153, §15; 2001 Acts, ch 176, §80
Terminology change applied

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 manufactured or 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.

To avoid interest on delinquent taxes, a payment must be received by the treasurer on or before the last business day of the month preceding the delinquent date, or mailed with appropriate postage and applicable fees paid, and a United States postal service postmark affixed to the payment envelope, with the postmark bearing a date preceding the delinquent date. Items returned to the sender by the United States postal service for insufficient postage or applicable fees shall be assessed interest, unless the appropriate postage and fees are paid and the items are postmarked again before the delinquent date.

To avoid interest on delinquent taxes, an electronic payment must be received in the treasurer's account on the first business day of the delinquency month.

2001 Acts, ch 45, §7; 2001 Acts, ch 153, §15; 2001 Acts, ch 176, §80
Terminology change applied
NEW unnumbered paragraph 4

445.38 Apportionment.

If ad valorem or manufactured or mobile home taxes are paid by installment, each of those payments shall be apportioned among the several funds for which taxes have been assessed in their proper proportions.

2001 Acts, ch 153, §15; 2001 Acts, ch 176, §80
Terminology change applied

CHAPTER 446

TAX SALES

446.38 Suspended taxes of old-age assistance recipients.

In cases where taxes were suspended one year or more upon the parcel of a deceased old-age assistance recipient and no estate was opened within ninety days after the death of the recipient and the surviving spouse of the recipient is not occupying the parcel, the county may apply to the probate court to have the parcel conveyed to it for satisfaction of the suspended taxes. The probate court shall prescribe the manner and notices to be given.

The probate court shall order the parcel conveyed to the county for satisfaction of the suspended taxes if an estate is not opened within a time specified by the court. The probate court shall make and enter all appropriate orders to effect this conveyance to the county if an estate is not opened within the time specified. The parcel, at the election of the county treasurer, may be offered at tax sale in accordance with this chapter in lieu of the county making application to the probate court.

2001 Acts, ch 24, §52
Section amended

CHAPTER 447

TAX REDEMPTION

447.11 Agent of nonresident.

A nonresident may in writing appoint a resident of the county in which the parcel is situated as agent, and file the appointment with the county treasurer of the county, who shall make note of the appointment in the county system, after which service of notice by certified and regular mail shall be made upon the agent.

2001 Acts, ch 45, §8
Section amended

447.13 Cost — fee — report.

The cost of publication under section 447.10, if publication is required, shall be added to the amount necessary to redeem. The county treasurer shall file the proof of service and statement of costs and record these costs against the parcel. The certificate holder or the holder's agent shall report in writing to the treasurer the amount of authorized costs incurred, and the treasurer shall file the statement. Costs not filed with the trea-

surer before a redemption is complete shall not be collected by the treasurer and may be recovered through a court action against the parcel owner by the certificate holder. If the parcel is held by a city or county, a city or county agency, or the Iowa finance authority, for use in an Iowa homesteading project, whether or not the parcel is the subject of a conditional conveyance granted under the project, the costs incurred for repairs and rehabilitation work required and undertaken in order to make the parcel meet applicable building or housing code standards shall be added to the amount necessary to redeem.

For tax sale certificates of purchase held by a county, the cost of a record search and the cost of serving the notice, including the cost of mailing certified mail notices and the cost of publication under section 447.10, if publication is required, shall be added to the amount necessary to redeem.

2001 Acts, ch 45, §9, 11
Section amended

CHAPTER 450

INHERITANCE TAX

450.4 Exemptions.

The tax imposed by this chapter shall not be collected:

1. When the entire estate of the decedent does not exceed the sum of twenty-five thousand dollars after deducting the liabilities, as defined in this chapter.

2. When the property passes for a charitable, educational, or religious purpose as defined in sections 170(c) and 2055 of the Internal Revenue Code.

3. When the property passes to public libraries or public art galleries within this state, open to the use of the public and not operated for gain, or to hospitals within this state, or to trustees for such uses within this state, or to municipal corporations for purely public purposes.

4. Bequests for the care and maintenance of the cemetery or burial lot of the decedent or the decedent's family, and bequests not to exceed five hundred dollars in any estate of a decedent for the performance of a religious service or services by some person regularly ordained, authorized, or licensed by some religious society to perform such service, which service or services are to be performed for or in behalf of the testator or some person named in the testator's last will.

5. On the value of that portion of any lump sum or installment payments which will be includable as net income as defined in section 422.7 as re-

ceived by a beneficiary under an annuity which was purchased under an employee's pension or retirement plan.

6. On property in an individual development account in the name of the decedent that passes to another individual development account or the state human investment reserve pool created in section 541A.4. For purposes of this subsection, "*individual development account*" means an account that has been certified as an individual development account pursuant to chapter 541A.

7. On the value of that portion of any lump sum or installment payments which are received by a beneficiary under an annuity which was purchased under an employee's pension or retirement plan where the employee is a nonresident of Iowa at the time of death.

8. On the value of that portion of any lump sum or installment payments which are received by a beneficiary under an annuity which was purchased under an employee's pension or retirement plan which was excluded from net income as set forth in section 422.7, subsection 31.

2001 Acts, ch 140, §1, 5; 2001 Acts, ch 150, §20, 21
2001 amendment to subsection 1 applies to estates of decedents dying on or after July 1, 2001; 2001 Acts, ch 140, §5
Subsections 1 and 5 amended
NEW subsections 7 and 8

450.10 Rate of tax.

The property or any interest therein or income

therefrom, subject to the provisions of this chapter, shall be taxed as herein provided:

1. When the property or any interest in property, or income from property, taxable under the provisions of this chapter, passes to the brother or sister, son-in-law, or daughter-in-law, the rate of tax imposed on the individual share so passing shall be as follows:

Five percent on any amount up to twelve thousand five hundred dollars.

Six percent on any amount in excess of twelve thousand five hundred dollars and up to twenty-five thousand dollars.

Seven percent on any amount in excess of twenty-five thousand dollars and up to seventy-five thousand dollars.

Eight percent on any amount in excess of seventy-five thousand dollars and up to one hundred thousand dollars.

Nine percent on any amount in excess of one hundred thousand dollars and up to one hundred fifty thousand dollars.

Ten percent on all sums in excess of one hundred fifty thousand dollars.

2. When the property or interest in property or income from property, taxable under this chapter, passes to a person not included in subsections 1 and 6, the rate of tax imposed on the individual share so passing shall be as follows:

Ten percent on any amount up to fifty thousand dollars.

Twelve percent on any amount in excess of fifty thousand dollars and up to one hundred thousand dollars.

Fifteen percent on all sums in excess of one hundred thousand dollars.

3. When the property or any interest therein or income therefrom, taxable under the provisions of this chapter, passes in any manner to societies, institutions or associations incorporated or organized under the laws of any other state, territory, province or country than this state, for charitable, educational or religious purposes, or to cemetery associations, including humane societies not organized under the laws of this state, or to resident trustees for uses without this state, the rate of tax imposed shall be as follows:

Ten percent on the entire amount so passing.

4. When the property or any interest in property or income from property, taxable under this chapter, passes to any firm, corporation, or society organized for profit, including fraternal and social organizations which do not qualify for exemption under sections 170(c) and 2055 of the Internal Revenue Code, the rate of tax imposed shall be as

follows:

Fifteen percent on the entire amount so passing.

5. When the property or any interest in property, or income from property, taxable under this chapter, passes to any person included under subsection 1, there shall be credited to the tax imposed on the individual share so passing an amount equal to the tax imposed in this state on the decedent on any property, real, personal or mixed, or the proportionate share thereof on property passing to the person taxed hereunder, which can be identified as having been received by the decedent as a share in the estate of any person who died within two years prior to the death of the decedent, or which can be identified as having been acquired by the decedent in exchange for property so received. The credit shall not be applicable to taxes on property of the decedent which was not acquired from the prior estate.

6. Property, interest in property, or income passing to the surviving spouse, and parents, grandparents, great-grandparents, and other lineal ascendants, children including legally adopted children and biological children entitled to inherit under the laws of this state, stepchildren, and grandchildren, great-grandchildren, and other lineal descendants, is not taxable under this section.

2001 Acts, ch 116, §24, 28

2001 amendment to subsection 4 applies to estates of decedents dying on or after July 1, 2001; 2001 Acts, ch 116, §28

Subsection 4 amended

450.44 Remainders — valuation.

When a person whose estate over and above the amount of that person's liabilities, as defined in this chapter, exceeds the sum of twenty-five thousand dollars, bequeaths, devises, or otherwise transfers real property to or for the use of persons exempt from the tax imposed by this chapter, during life or for a term of years and the remainder to persons not thus exempt, this property, upon the determination of the estate for life or years, shall be valued at its then actual market value from which shall be deducted the value of any improvements on it made by the person who owns the remainder interest during the time of the prior estate, to be determined as provided in section 450.37, subsection 1, paragraph "a", and the tax on the remainder shall be paid by the person who owns the remainder interest as provided in section 450.46.

2001 Acts, ch 140, §2, 5

2001 amendment applies to estates of decedents dying on or after July 1, 2001; 2001 Acts, ch 140, §5

Section amended

CHAPTER 452A

MOTOR FUEL AND SPECIAL FUEL TAXES

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 gasoline other than grain alcohol are 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. This 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. "*Denatured ethanol*" means ethanol that is to be blended with gasoline, has been derived from cereal grains, complies with American society of testing materials designation D-4806-95b, and may be denatured only as specified in Code of Federal Regulations, Titles 20, 21, and 27. Alcohol and denatured ethanol have the same meaning in this chapter.
6. "*Department*" means the department of revenue and finance.
7. "*Director*" means the director of revenue and finance.
8. "*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.
9. "*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.
10. "*Ethanol blended gasoline*" means motor fuel containing at least ten percent alcohol distilled from cereal grains.
11. "*Export*" means delivery across the boundaries of this state by or for the seller or purchaser from a place of origin in this state.
12. "*Exporter*" means a person or other entity who acquires fuel in this state for export to another state.
13. "*Import*" means delivery across the boundaries of this state by or for the seller or purchaser from a place of origin outside this state.
14. "*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.
15. "*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.
16. "*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 fuel 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.
17. "*Licensee*" means a person holding an uncanceled 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.
18. "*Motor fuel*" means both of the following:
 - a. All products commonly or commercially known or sold as gasoline, including ethanol blended gasoline, casinghead, and absorption or natural gasoline, regardless of their classifications or uses, and including transmix which serves as a buffer between fuel products in the pipeline distribution process.
 - 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.

19. “*Naphthas and solvents*” shall mean and include those liquids which come within the distillation specifications for motor fuel set out under subsection 18, paragraph “b”, but which are designed and sold for exclusive use other than as a fuel for propelling motor vehicles.

20. “*Racing fuel*” means leaded gasoline of one hundred ten octane or more that does not meet American society of testing materials designation D-4814 for gasoline and is sold in bulk for use in nonregistered motor vehicles.

21. “*Regional transit system*” means regional transit system as defined in section 452A.57, subsection 11.

22. “*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.

23. “*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. Kerosene shall not be considered to be a special fuel, unless blended with other special fuels for use in a motor vehicle with a diesel engine.

24. “*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.

25. “*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.

26. “*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.

27. “*Urban transit system*” means Iowa urban transit system as defined in section 452A.57, subsection 6.

28. “*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.

29. “*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.

2001 Acts, ch 150, §22, 23

Additional definitions, see §452A.57

NEW subsection 5 and former subsections 5 – 18 renumbered as 6 – 18

Subsection 18, paragraph a amended

NEW subsection 20 and former subsections 19 – 27 renumbered as 21

– 29

452A.3 Levy of excise tax.

1. Except as otherwise provided in this section and in this division, until June 30, 2007, this subsection shall apply to the excise tax imposed on each gallon of motor fuel used for any purpose for the privilege of operating motor vehicles in this state.

a. The rate of the excise tax shall be based on the number of gallons of ethanol blended gasoline that is distributed in this state as expressed as a percentage of the number of gallons of motor fuel distributed in this state, which is referred to as the distribution percentage. The department shall determine the percentage basis for each determination period beginning January 1 and ending December 31. The rate for the excise tax shall apply for the period beginning July 1 and ending June 30 following the end of the determination period.

b. The rate for the excise tax shall be as follows:

(1) If the distribution percentage is not greater than fifty percent, the rate shall be nineteen cents for ethanol blended gasoline and twenty cents for motor fuel other than ethanol blended gasoline.

(2) If the distribution percentage is greater than fifty percent but not greater than fifty-five percent, the rate shall be nineteen cents for ethanol blended gasoline and twenty and one-tenth cents for motor fuel other than ethanol blended gasoline.

(3) If the distribution percentage is greater than fifty-five percent but not greater than sixty percent, the rate shall be nineteen cents for ethanol blended gasoline and twenty and three-tenths cents for motor fuel other than ethanol blended gasoline.

(4) If the distribution percentage is greater than sixty percent but not greater than sixty-five percent, the rate shall be nineteen cents for ethanol blended gasoline and twenty and five-tenths cents for motor fuel other than ethanol blended gasoline.

(5) If the distribution percentage is greater than sixty-five percent but not greater than seventy percent, the rate shall be nineteen cents for ethanol blended gasoline and twenty and seven-tenths cents for motor fuel other than ethanol blended gasoline.

(6) If the distribution percentage is greater than seventy percent but not greater than seventy-five percent, the rate shall be nineteen cents for ethanol blended gasoline and twenty-one cents for motor fuel other than ethanol blended gasoline.

(7) If the distribution percentage is greater than seventy-five percent but not greater than eighty percent, the rate shall be nineteen and three-tenths cents for ethanol blended gasoline and twenty and eight-tenths cents for motor fuel other than ethanol blended gasoline.

(8) If the distribution percentage is greater than eighty percent but not greater than eighty-five percent, the rate shall be nineteen and five-tenths cents for ethanol blended gasoline and twenty and seven-tenths cents for motor fuel other than ethanol blended gasoline.

(9) If the distribution percentage is greater than eighty-five percent but not greater than ninety percent, the rate shall be nineteen and seven-tenths cents for ethanol blended gasoline and twenty and four-tenths cents for motor fuel other than ethanol blended gasoline.

(10) If the distribution percentage is greater than ninety percent but not greater than ninety-five percent, the rate shall be nineteen and nine-tenths cents for ethanol blended gasoline and twenty and one-tenth cents for motor fuel other than ethanol blended gasoline.

(11) If the distribution percentage is greater than ninety-five percent, the rate shall be twenty cents for ethanol blended gasoline and twenty cents for motor fuel other than ethanol blended gasoline.

1A. Except as otherwise provided in this section and in this division, after June 30, 2007, an excise tax of twenty cents is imposed on each gallon of motor fuel used for any purpose for the privilege of operating motor vehicles in this state.

2. 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.

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 the dyed fuel 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.

Tax shall not be paid when the sale of alcohol occurs within a terminal from an alcohol manufacturer to an Iowa licensed supplier. The tax shall be paid by the Iowa licensed supplier when the invoiced gross gallonage of the alcohol or the alcohol part of ethanol blended gasoline is withdrawn from a terminal for delivery in this state.

b. The person who owns the fuel at the time it is 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.

2001 Acts, ch 123, §4 – 6; 2001 Acts, ch 150, §24
Excise tax on motor vehicle fuel as provided on June 30, 2001, applies until July 1, 2002; determination of excise tax for subsequent periods; 2001 Acts, ch 123, §6
Subsection 1 stricken and rewritten
NEW subsection 1A
Subsection 2, paragraph b stricken and former paragraph a redesignated as an unnumbered paragraph
Subsection 5, paragraph a, NEW unnumbered paragraph 2

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 directly to and 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, implements used in agricultural production, and machinery and equipment used for nonhighway purposes.

(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 distributors, 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 undyed 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.

(9) Undyed special fuel used in watercraft.

(10) Racing fuel.

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 that was used or will be used by the claimant other than in aircraft, watercraft, or to propel motor vehicles and the gallonage of undyed special fuel that was or will be used by the claimant other than in 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 aircraft, watercraft, or to propel motor vehicles from the same tanks or receptacles in which the claimant kept the motor fuel on which the refund is claimed or whether the claimant used fuel for aircraft or to propel motor vehicles from the same tanks or receptacles in which the claimant kept the 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 pur-

poses of filing and receiving the refund for idle time, power takeoff, reefer units, pumping credits, and transport diversions. A governmental agency may be designated as an agent for another governmental agency for purposes of filing and receiving the refund under this section.

(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 not used in motor vehicles, aircraft, or watercraft or as to undyed special fuel not used in motor vehicles or aircraft.

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 not be paid with respect to

any motor fuel taken out of this state in supply tanks of watercraft, aircraft, or motor vehicles or with respect to any undyed special fuel taken out of this state in supply tanks of aircraft or motor vehicles.

2001 Acts, ch 150, §25

See §452A.81

Subsection 1, paragraph a, NEW subparagraph (10)

452A.52 Fuels imported in supply tanks of motor vehicles.

1. No person shall bring into this state in the fuel supply tanks of a commercial motor vehicle, or any other container, regardless of whether or not the supply tanks are connected to the motor of the vehicle, any motor fuel or special fuel to be used in the operation of the vehicle in this state unless that person has paid or made arrangements in advance with the state department of transportation for payment of Iowa fuel taxes on the gallonage consumed in operating the vehicle in this state; except that this division shall not apply to a private passenger automobile.

2. Any person who is unable to display either of the permits or the license provided in section 452A.53 and brings into the state in the fuel supply tanks of a commercial motor vehicle more than thirty gallons of motor fuel or special fuel in violation of subsection 1 commits a simple misdemeanor punishable as a scheduled violation under section 805.8A, subsection 13, paragraph "c".

2001 Acts, ch 176, §57, 59

Unnumbered paragraphs 1 and 2 editorially designated as subsections 1 and 2

Subsection 2 amended

CHAPTER 453A

CIGARETTE AND TOBACCO TAXES

453A.2 Persons under legal age.

1. A person shall not sell, give, or otherwise supply any tobacco, tobacco products, or cigarettes to any person under eighteen years of age.

2. A person under eighteen years of age shall not smoke, use, possess, purchase, or attempt to purchase any tobacco, tobacco products, or cigarettes.

3. Possession of cigarettes or tobacco products by an individual under eighteen years of age does not constitute a violation under this section if the individual under eighteen years of age possesses the cigarettes or tobacco products as part of the individual's employment and the individual is employed by a person who holds a valid permit under this chapter or who lawfully offers for sale or sells cigarettes or tobacco products.

4. The Iowa department of public health, a county health department, a city health department, or a city may directly enforce this section in

district court and initiate proceedings pursuant to section 453A.22 before a permit-issuing authority which issued the permit against a permit holder violating this section.

5. Payment and distribution of court costs, fees, and fines in a prosecution initiated by a city or county shall be made as provided in chapter 602 for violation of a city or county ordinance.

6. A person shall not be guilty of a violation of this section if conduct that would otherwise constitute a violation is performed to assess compliance with cigarette and tobacco products laws if any of the following applies:

a. The compliance effort is conducted by or under the supervision of law enforcement officers.

b. The compliance effort is conducted with the advance knowledge of law enforcement officers and reasonable measures are adopted by those conducting the effort to ensure that use of cigarettes or tobacco products by individuals under

eighteen years of age does not result from participation by any individual under eighteen years of age in the compliance effort.

For the purposes of this subsection, “*law enforcement officer*” means a peace officer as defined in section 801.4 and includes persons designated under subsection 4 to enforce this section.

2001 Acts, ch 116, §25
For scheduled fines applicable to violations of subsections 1 and 2, see §805.8C, subsection 3, paragraphs b and c
Subsection 4 amended

453A.3 Penalty.

1. *a.* A person, other than a retailer, who violates section 453A.2, subsection 1, is guilty of a simple misdemeanor.

b. An employee of a retailer who violates section 453A.2, subsection 1, commits a simple misdemeanor punishable as a scheduled violation under section 805.8C, subsection 3, paragraph “*b*”.

c. A person who violates section 453A.39,* is

guilty of a simple misdemeanor.

2. A person who violates section 453A.2, subsection 2, is subject to the following, as applicable:

a. A civil penalty pursuant to section 805.8C, subsection 3, paragraph “*c*”. Notwithstanding section 602.8106 or any other provision to the contrary, any civil penalty paid under this subsection shall be retained by the city or county enforcing the violation.

b. For a first offense, performance of eight hours of community work requirements, unless waived by the court.

c. For a second offense, performance of twelve hours of community work requirements.

d. For a third or subsequent offense, performance of sixteen hours of community work requirements.

2001 Acts, ch 137, §5
*Section 453A.39 repealed effective May 15, 2000; corrective legislation is pending
Internal reference change applied

CHAPTER 453C

TOBACCO PRODUCT MANUFACTURERS — FINANCIAL OBLIGATIONS

453C.1 Definitions.

1. “*Adjusted for inflation*” means increased in accordance with the formula for inflation adjustment set forth in exhibit “C” to the master settlement agreement.

2. “*Affiliate*” means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms “*owns*”, “*is owned*”, and “*ownership*” mean ownership of an equity interest, or the equivalent thereof, of ten percent or more, and the term “*person*” means an individual, partnership, committee, association, corporation, or any other organization or group of persons.

3. “*Allocable share*” means allocable share as defined in the master settlement agreement.

4. “*Cigarette*” means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains any of the following:

a. Any roll of tobacco wrapped in paper or in any substance not containing tobacco.

b. Tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette.

c. Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph “*a*” of this definition.

The term “*cigarette*” includes “roll-your-own” to-

bacco, meaning tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes. For purposes of this definition of “*cigarette*”, 0.09 ounces of “roll-your-own” tobacco shall constitute one individual “cigarette”.

5. “*Master settlement agreement*” means the settlement agreement and related documents entered into on November 23, 1998, by the state and leading United States tobacco product manufacturers.

6. “*Qualified escrow fund*” means an escrow arrangement with a federally or state-chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least one billion dollars where such arrangement requires that such financial institution hold the escrowed funds’ principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing, or directing the use of the funds’ principal except as consistent with section 453C.2, subsection 2, paragraph “*b*”.

7. “*Released claims*” means released claims as that term is defined in the master settlement agreement.

8. “*Releasing parties*” means releasing parties as that term is defined in the master settlement agreement.

9. “*Tobacco product manufacturer*” means an entity that on or after May 20, 1999, directly and not exclusively through any affiliate does any of the following:

a. Manufactures cigarettes anywhere that

such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an original participating manufacturer, as that term is defined in the master settlement agreement, that will be responsible for the payments under the master settlement agreement with respect to such cigarettes as a result of the provisions of subsection II(mm) of the master settlement agreement and that pays the taxes specified in subsection II(z) of the master settlement agreement and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States).

b. Is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States.

c. Becomes a successor of an entity described in paragraph "a" or "b".

The term "tobacco product manufacturer" shall not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within any of paragraphs "a" through "c".

10. "Units sold" means the number of individual cigarettes sold in the state by the applicable tobacco product manufacturer, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, during the year in question, as measured by excise taxes collected by the state on packs or roll-your-own tobacco containers bearing the excise tax stamp of the state. The department of revenue and finance shall adopt rules as are necessary to ascertain the amount of state excise tax paid on the cigarettes of such tobacco product manufacturer for each year.

2001 Acts, ch 18, §1, 2, 4
Subsection 4, paragraph c, unnumbered paragraph 2 amended
Subsection 9, paragraph a amended

453C.2 Requirements.

Any tobacco product manufacturer selling cigarettes to consumers within the state, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, on or after May 20, 1999, shall do one of the following:

1. Become a participating manufacturer as that term is defined in section II(jj) of the master settlement agreement and generally perform its financial obligations under the master settlement agreement.

2. a. Place into a qualified escrow fund by April 15 of the year following the year in question, the following amounts, as such amounts are adjusted for inflation:

(1) For 1999: \$.0094241 per unit sold on or after May 20, 1999.

(2) For 2000: \$.0104712 per unit sold.

(3) For each of 2001 and 2002: \$.0136125 per unit sold.

(4) For each of 2003 through 2006: \$.0167539 per unit sold.

(5) For 2007 and each year thereafter: \$.0188482 per unit sold.

b. A tobacco product manufacturer that places funds into escrow pursuant to paragraph "a" shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under any of the following circumstances:

(1) To pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the state or any releasing party located or residing in the state. Funds shall be released from escrow, under this subparagraph (1), (a) in the order in which they were placed into escrow and (b) only to the extent and at the time necessary to make payments required under such judgment or settlement.

(2) To the extent that a tobacco product manufacturer establishes that the amount the manufacturer was required to place into escrow in a particular year was greater than the state's allocable share of the total payments that such manufacturer would have been required to make in that year under the master settlement agreement had such manufacturer been a participating manufacturer, as such payments are determined pursuant to section IX(i)(2) of the master settlement agreement and before any of the adjustments or offsets described in section IX(i)(3) of that agreement other than the inflation adjustment, the excess shall be released from escrow and revert back to such tobacco product manufacturer.

(3) To the extent not released from escrow under subparagraph (1) or (2), funds shall be released from escrow and revert back to such tobacco product manufacturer twenty-five years after the date on which they were placed into escrow.

c. Each tobacco product manufacturer that elects to place funds into escrow pursuant to this subsection shall annually certify to the attorney general that the manufacturer is in compliance with this subsection. The attorney general may bring a civil action on behalf of the state against any tobacco product manufacturer that is not a participating manufacturer under the master settlement agreement and fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this subsection shall be subject to all of the following:

(1) Be required within fifteen days to place such funds into escrow as shall bring the manufacturer into compliance with this subsection. The court, upon a finding of a violation of this subsection, may impose a civil penalty, to be paid to the general fund of the state, in an amount not to exceed five percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed one hundred percent of the original amount improperly withheld from escrow.

(2) In the case of a knowing violation, be required within fifteen days to place such funds into escrow as shall bring the manufacturer into compliance with this subsection. The court, upon a finding of a knowing violation of this subsection, may impose a civil penalty, to be paid to the general fund of the state, in an amount not to exceed fifteen percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed three hundred percent of the original amount improperly withheld from escrow.

(3) In the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the state, whether directly or through a distributor, retailer, or similar intermediary, for a period not to exceed two years.

d. Each failure to make an annual deposit required under this subsection shall constitute a separate violation.

2001 Acts, ch 18, §3, 4

Subsection 2, paragraph b, subparagraph (1) amended

CHAPTER 455A

DEPARTMENT OF NATURAL RESOURCES

455A.7 Divisions created — deputy director and administrators appointed by director.

1. The following divisions are created within the department:

a. Parks and preserves division which is responsible for programs relating to water access development, state parks and recreation areas, and preserves.

b. Forests and prairies division which is responsible for administering programs relating to state forests, forestry, and prairie management assistance to private and public landowners, and for the operation of the state nursery under section 456A.20.

c. Fish and wildlife division which is responsible for programs relating to wildlife, law enforcement, fisheries, and land acquisition and management.

d. Energy and geological resources division which is responsible for programs relating to energy, geological survey, and oil and gas production.

e. Environmental protection division which is responsible for programs relating to wastewater treatment, water supply, hazardous wastes, air and land, and field services.

f. Administrative services division which is responsible for finance, budget and grants, administrative support, data processing, licensing, and construction services.

g. Land quality and waste management assistance division which is responsible for programs related to solid waste, hazardous waste, and land quality in addition to the responsibilities provided in chapter 455B, division IV, part 9, and division VII.

h. Office of the director which has responsibilities for administering the department, including information dissemination, education, and government liaison services.

i. Additional divisions deemed necessary for the effective and efficient administration of the department.

2. The director shall appoint a deputy director who shall be in charge of the department in the absence of the director. The appointment shall be based on the appointee's training, experience, and capabilities.

3. The director shall appoint an administrator for each division created under subsection 1. The director shall make the appointment based on the appointee's training, experience, and capabilities. Each administrator has the responsibility of administering the programs assigned the division under subsection 1 and other programs assigned by the director. Each administrator shall carry out the duties and responsibilities of office under the general direction and supervision of the director.

2001 Acts, ch 7, §3

Subsection 1, former paragraphs g, h, and i redesignated editorially as i, g, and h respectively

Subsection 1, paragraph g amended

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 resource 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 section 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 ma-

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 facilities. Funds may be used for county projects located within the boundaries of a city.

(5) Funds allocated pursuant to subparagraphs (2) and (3) shall only be allocated to counties dedicating property tax revenue at least equal to twenty-two cents per thousand dollars of the assessed value of taxable property in the county to county conservation purposes. State funds received under this paragraph shall not reduce or replace county tax revenues appropriated for county conservation purposes. The county 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 enhancement 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 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".

2001 Acts, ch 24, §53

Subsection 1, paragraph a, unnumbered paragraph 1 amended

CHAPTER 455B

JURISDICTION OF DEPARTMENT OF NATURAL RESOURCES

455B.310 Tonnage fee imposed — appropriations — exemptions.

1. Except as provided in subsection 5, 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.

3. If a sanitary landfill required to pay a tonnage fee under this section has an updated comprehensive plan approved by the department, the sanitary landfill operator shall retain, in addition to the ninety-five cents retained pursuant to subsection 4, twenty-five cents of the tonnage fee per ton of solid waste in the fiscal year beginning July 1, 1998, and every year thereafter. In the fiscal year beginning July 1, 1999, and every year thereafter, any planning area which meets the statewide average, as determined by the department on July 1, 1999, shall retain, in addition to the twenty-five cents retained pursuant to this subsection, ten cents of the tonnage fee per ton of solid waste regardless of whether the planning area subsequently fails to meet the statewide average. Any tonnage fees retained pursuant to this subsection shall be used for waste reduction, recycling, or small business pollution prevention purposes. Any tonnage fee retained pursuant to this subsection shall be taken from that portion of the tonnage fee which would have been allocated to funding alternatives to landfills pursuant to section 455E.11, subsection 2, paragraph "a", subparagraph (1).

4. 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 imple-

ment the comprehensive plan pursuant to section 455B.306, fees under this paragraph shall be retained by the private agency.

c. For other environmental protection activities.

d. Each sanitary landfill owner or operator shall submit a return to the department identifying the use of all fees retained under this section including the manner in which the fees were distributed. The return shall be submitted concurrently with the return required under subsection 7.

5. Solid waste disposal facilities with special provisions which limit the site to disposal of construction and demolition waste, landscape waste, coal combustion waste, cement kiln dust, 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 deposited in the solid waste account as established in section 455E.11, subsection 2, paragraph "a", to be used by the department for the regulation of these solid waste disposal facilities.

6. 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.

7. 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.

8. A person required to pay fees by this section who fails or refuses to pay the fees imposed by this section or who fails or refuses to provide the return required by this section shall be assessed a penalty of two percent of the fee due for each month the fee or return is overdue. The penalty shall be paid in addition to the fee due.

9. Foundry sand used by a sanitary landfill as daily cover, road base, or berm material or for oth-

er 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.

For future amendment to subsection 4 effective July 1, 2001, see 2001 Acts, ch 124, §1, 6

Section not amended; footnote added

455B.473 Report of existing and new tanks — fee.

1. Except as provided in subsection 2, the owner or operator of an underground storage tank existing on or before July 1, 1985, shall notify the department in writing by May 1, 1986, of the existence of each tank and specify the age, size, type, location and uses of the tank.

2. The owner of an underground storage tank taken out of operation between January 1, 1974 and July 1, 1985, shall notify the department in writing by July 1, 1986, of the existence of the tank unless the owner knows the tank has been removed from the ground. The notice shall specify to the extent known to the owner, the date the tank was taken out of operation, the age of the tank on the date taken out of operation, the size, type and location of the tank, and the type and quantity of substances left stored in the tank on the date that it was taken out of operation.

3. An owner or operator which brings into use an underground storage tank after July 1, 1985, shall notify the department in writing within thirty days of the existence of the tank and specify the age, size, type, location and uses of the tank.

4. An owner or operator of a storage tank described in section 455B.471, subsection 11, paragraph "a", which brings the tank into use after July 1, 1987, shall notify the department of the existence of the tank within thirty days. The registration of the tank shall be accompanied by a fee of ten dollars to be deposited in the storage tank management account. A tank which is existing before July 1, 1987, shall be reported to the department by July 1, 1989. Tanks under this section installed on or following July 1, 1987, shall comply with underground storage tank regulations adopted by rule by the department.

5. The notice of the owner or operator to the department under subsections 1 through 3 shall be accompanied by a fee of ten dollars for each tank included in the notice. All moneys collected shall be deposited in the storage tank management account of the groundwater protection fund created in section 455E.11. All moneys collected pursuant to this section prior to July 1, 1987, which have not been expended, shall be deposited in the storage tank management account.

6. Subsections 1 to 3 do not apply to an underground storage tank for which notice was given

pursuant to section 103, subsection c, of the Comprehensive Environmental Response, Compensation and Liabilities Act of 1980.

7. A person who sells, installs, modifies, or repairs a tank used or intended to be used as an underground storage tank shall notify the purchaser and the owner or operator of the tank in writing of the owner's notification requirements pursuant to this section including the prohibition on depositing a regulated substance into tanks which have not been registered and issued tags by the department. A person who installs an underground storage tank and the owner or operator of the underground storage tank shall, prior to installing an underground storage tank, notify the department in writing regarding the intent to install a tank.

8. It shall be unlawful to deposit or accept a regulated substance in an underground storage tank which has not been registered and issued permanent and annual tank management fee renewal tags pursuant to subsections 1 through 6. It shall also be unlawful to deposit a regulated substance in an underground storage tank after receiving notice from the department that the underground storage tank is not covered by an approved form of financial responsibility in accordance with section 455B.474, subsection 2.

The department shall furnish the owner or operator of an underground storage tank with a registration tag for each underground storage tank registered with the department. The owner or operator shall affix the tag to the fill pipe of each registered underground storage tank. If an owner or operator fails to register or obtain annual renewal tags for the underground storage tank, the owner or operator shall pay an additional fee of two hundred fifty dollars upon registration of the tank. A fee imposed pursuant to this subsection shall not preclude the department from assessing an administrative penalty pursuant to section 455B.476.

9. The department may deny issuance of a registration or annual tank management fee renewal tag for failure of the owner or operator to provide proof the underground storage tank is covered by an approved form of financial responsibility as provided in section 455B.474, subsection 2.

2001 Acts, ch 51, §1, 2
Subsection 7 stricken and former subsections 8 and 9 amended and renumbered as 7 and 8
NEW subsection 9

PART 9

LAND QUALITY AND WASTE MANAGEMENT ASSISTANCE DIVISION

455B.480 Short title.

This part may be cited as the "*Land Quality and Waste Management Assistance Division Act*".

2001 Acts, ch 7, §4
Section amended

455B.481 Waste management policy.

1. The purpose of this part is to promote the proper and safe storage, treatment, and disposal of solid, hazardous, and low-level radioactive wastes in Iowa. The management of these wastes generated within Iowa is the responsibility of Iowans. It is the intent of the general assembly that Iowans assume this responsibility to the extent consistent with the protection of public health, safety, and the environment, and that Iowans insure that waste management practices, as alternatives to land disposal, including source reduction, recycling, compaction, incineration, and other forms of waste reduction, are employed.

2. It is also the intent of the general assembly that a comprehensive waste management plan be established by the land quality and waste management assistance division which includes: the determination of need and adequate regulatory controls prior to the initiation of site selection; the process for selecting a superior site determined to be necessary; the establishment of a process for a site community to submit or present data, views, or arguments regarding the selection of the operator and the technology that best ensures proper facility operation; the prohibition of shallow land burial of hazardous and low-level radioactive wastes; the establishment of a regulatory framework for a facility; and the establishment of provisions for the safe and orderly development, operation, closure, postclosure, and long-term monitoring and maintenance of the facility.

3. In order to meet capacity assurance requirements of section 104k of the federal Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, and further the objectives of waste minimization, the department, in cooperation with the small business assistance center at the university of northern Iowa, shall work with generators of hazardous wastes in the state to develop and implement aggressive waste minimization programs. The goal of these programs is to reduce the volume of hazardous waste generated in the state as a whole by twenty-five percent of the amount generated as of January 1, 1987, as reported in the biennial reports collected by the United States environmental protection agency. The twenty-five percent reduction goal shall be reached as expeditiously as possible and no later than July 1, 1994. In meeting the reduction goal, elements "a" through "d" of the hazardous waste management hierarchy shall be utilized. The department, in cooperation with the small business assistance center, shall reassess the twenty-five percent reduction goal in 1994. The department shall promote research and development, provide and promote educational and informational programs, promote and encourage voluntary technical assistance to hazardous waste generators, promote assistance by the small business assistance center, and promote other activities by the public

and private sectors that support this goal. In the promotion of the goal, the following hazardous waste management hierarchy, in descending order of preference, is established by the department:

- a. Source reduction for waste elimination.
- b. On-site recycling.
- c. Off-site recycling.
- d. Waste treatment.
- e. Incineration.
- f. Land disposal.

4. Additionally, the department shall establish and distribute to generators a listing of hazardous waste materials which are currently being recycled. The department shall require that each hazardous waste generator in the state submit, with the biennial report submitted to the United States environmental protection agency, a report of hazardous waste materials currently designated as recyclable by the department which are not being recycled by the generator. The report shall include the reason why the generator is not recycling such products. A small generator which does not submit a biennial report to the United States environmental protection agency, shall provide the information required to be submitted under this paragraph on a form provided by the department, with the submittal of the small generator's hazardous waste permit fee.

5. The department shall consult with representatives of industries which generate hazardous waste and shall make recommendations to the general assembly by January 1, 1991, concerning the possible application of a front-end fee for substances which will result in the generation of hazardous waste, the role of state government in assisting the private sector in establishing permanent, on-site, internal audit functions, and other measures which state government may initiate to encourage and assist generators of hazardous waste in reducing the hazardous waste generated.

2001 Acts, ch 7, §5
Subsection 2 amended

455B.482 Definitions.

As used in this part unless the context otherwise requires:

1. "*Disposal*" means the isolation of waste from the biosphere in a permanent facility designed for that purpose.

2. "*Facilities*" means land and improvements on land, buildings and other structures, and other appurtenances used for the management of solid, toxic, hazardous, or low-level radioactive wastes, including but not limited to waste collection sites, waste transfer stations, waste reclamation and recycling centers, waste processing centers, waste treatment centers, waste storage sites, waste reduction and compaction centers, waste incineration centers, waste detoxification centers, and waste disposal sites.

3. “*Hazardous waste*” means hazardous waste as defined in section 455B.411, subsection 3, and under section 455B.464.

4. “*Land quality and waste management assistance division*” means the land quality and waste management assistance division established within the department of natural resources.

5. “*Long-term monitoring and maintenance*” means the continued observation and care of a facility after closure in order to ensure that the site poses no threat to the public health, the groundwater, and the environment. In the case of a low-level radioactive waste facility, the time period constituting “*long-term*” is the number of years of monitoring and maintenance based upon the half-life properties of the wastes, and in the case of a hazardous waste facility is the number of years based upon the projected active toxicity of the waste.

6. “*Low-level radioactive waste*” means low-level radioactive waste as defined in section 457B.1, article II, section “*m*”, and as defined in the federal Low-Level Radioactive Waste Policy Amendments Act, 42 U.S.C. § 2021.

7. “*Management of waste*” means the storage, transportation, treatment, or disposal of waste.

8. “*Person*” means person as defined in section 4.1.

9. “*Regulatory agency*” means a federal, state, or local agency that issues a license or permit required for the siting, construction, operation, or maintenance of a facility pursuant to federal or state statute or rule, or local ordinance or resolution.

10. “*Site*” means the geographic location of a facility.

11. “*Solid waste*” means solid waste as defined in section 455B.301, subsection 20.

12. “*State*” means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands or any other territorial possession of the United States.

13. “*Storage*” means the temporary holding of waste for treatment or disposal.

14. “*Treatment*” means any method, technique, or process designed to change the physical, chemical, or biological characteristics or composition of any waste in order to render the waste safer for transport or management, amenable to recovery, convertible to another usable material, or reduced in volume.

15. “*Waste*” means solid waste, hazardous waste, and low-level radioactive waste as defined in this section.

2001 Acts, ch 7, §6
Subsection 15 amended and renumbered as 4
Former subsections 4 – 14 renumbered as 5 – 15

455B.483 Land quality and waste management assistance division created.

A land quality and waste management assistance division is created within the department of

natural resources for the purpose of carrying out the provisions of this part. The land quality and waste management assistance division is under the immediate direction and supervision of the director of the department of natural resources.

2001 Acts, ch 7, §7
Section amended

455B.484 Duties of the division.

The division shall:

1. Recommend to the commission the adoption of rules necessary to implement this part.

2. Seek, receive, and accept funds in the form of appropriations, grants, awards, wills, bequests, endowments, and gifts for deposit into the land quality and waste management assistance division trust fund to be used for programs relating to the duties of the division under this part.

3. Administer and coordinate the waste management trust fund created under this part.

4. Enter into contracts and agreements, with the approval of the commission for contracts in excess of twenty-five thousand dollars, with local units of government, other state agencies, governments of other states, governmental agencies of the United States, other public and private contractors, and other persons as may be necessary or beneficial in carrying out its duties under this part.

5. Represent the state in all matters pertaining to plans, procedures, negotiations, and agreements for interstate compacts or public-private compacts relating to the ownership, operation, management, or funding of a facility. Any agreement is subject to the approval of the commission.

6. Review, propose, and recommend legislation relating to the proper and safe management of waste.

7. Establish a central repository and information clearinghouse within the state for the collection and dissemination of data and information pertaining to the proper and safe management of waste.

8. Develop, sponsor, and assist in the implementation of public education and information programs on proper and safe management of waste in cooperation with other public and private agencies as deemed appropriate.

9. Include in the annual report to the governor and the general assembly required by section 455A.4, subsection 1, paragraph “*d*”, information outlining the activities of the division in carrying out programs and responsibilities under this part, and identifying trends and developments in the management of waste. The report shall also include specific recommendations for attaining the goals for waste minimization and capacity assurance requirements.

10. Submit a report to the general assembly by January 1, 1988, regarding the feasibility and financial ramifications of limiting the type of waste accepted by a hazardous waste facility acquired or

operated pursuant to this chapter.

11. Solicit proposals from public and private agencies to conduct hazardous waste research, and to develop and implement storage, treatment, and other hazardous waste management practices including but not limited to source reduction, recycling, compaction, incineration, fuel recovery, and other alternatives to land disposal of hazardous waste. In the acceptance of a proposal, preference shall be given to Iowa agencies pursuant to chapter 73.

12. Conduct a comprehensive study of the current availability of hazardous waste disposal methods and sites, the current and projected generation of hazardous waste including but not limited to the types of hazardous waste generated and the sources of hazardous waste generation; alternatives to land disposal of hazardous waste including but not limited to source reduction, recycling, compaction, incineration, and fuel recovery; and integrated approaches to pollution management to ensure that the problems associated with hazardous waste do not become air or water problems; and alternative management and financing approaches for a state hazardous waste site.

13. *a.* Develop a comprehensive plan for the establishment of a small business assistance center for the safe and economic management of solid and hazardous substances. The plan for establishing the center shall be presented to the general assembly on or before January 15, 1988. The plan shall provide that the center's program include:

(1) The provision of information regarding the safe use and economic management of solid and hazardous substances to small businesses which generate the substances.

(2) The dissemination of information to public and private agencies regarding state and federal solid and hazardous substances regulations, and assistance in achieving compliance with these regulations.

(3) Advisement and consultation regarding the proper storage, handling, treatment, reuse, recycling, and disposal methods of solid and hazardous substances. The center shall promote alternatives to land disposal of solid and hazardous substances including but not limited to source reduction, recycling, compaction, incineration, and fuel recovery.

(4) The identification of the advantages of proper substance management relative to liability and operational costs of a particular small business.

(5) Assistance in the providing of capital formation in order to comply with state and federal regulations.

b. Moneys appropriated from the oil overcharge account of the groundwater protection fund shall be used to develop the comprehensive plan for the small business assistance center for the safe and economic management of solid and

hazardous substances.

c. In solicitation of proposals for the implementation of the comprehensive plan, the land quality and waste management assistance division shall give preference to cooperative proposals which incorporate and utilize the participation of the universities under the control of the state board of regents.

14. Develop and implement programs, in cooperation with the small business assistance center at the university of northern Iowa, which result in widespread adoption of waste minimization programs by hazardous waste generators. The department shall conduct educational and informational programs. The small business assistance center shall provide direct waste minimization technical assistance to small quantity hazardous waste generators. These programs may include, but are not limited to, source reduction, recycling, fuel recovery, incineration, compaction, and other alternatives to land disposal. The preference for program development and implementation shall be for programs which result in the generation of less waste, followed by a preference for programs which reuse the waste generated in a beneficial manner.

2001 Acts, ch 7, §§, 9
Subsection 2 amended
Subsection 13, paragraph c amended

455B.485 Powers and duties of the commission.

The commission shall:

1. Establish policy for the implementation of this part.

2. Adopt, modify, or repeal rules necessary to implement this part pursuant to chapter 17A.

3. Approve the budget request for the land quality and waste management assistance division prior to submission to the department of management. The commission may increase, decrease, or strike any proposed expenditure within the land quality and waste management assistance division budget request before granting approval.

4. Recommend legislative action which may be required for the safe and proper management of waste, for the acquisition or operation of a facility, for the funding of a facility, to enter into interstate agreements for the management of a facility, and to improve the operation of the land quality and waste management assistance division.

5. Approve all contracts and agreements, in excess of twenty-five thousand dollars, under this part between the land quality and waste management assistance division and other public or private persons or agencies.

2001 Acts, ch 7, §10
Subsections 3 – 5 amended

455B.516 Definitions.

As used in this division, unless the context

otherwise requires:

1. “*Commission*” means the environmental protection commission established pursuant to section 455A.6.

2. “*Department*” means the department of natural resources created pursuant to section 455A.2.

3. “*Division*” means the land quality and waste management assistance division created pursuant to section 455B.483.

4. “*Emergency Planning and Community Right-to-know Act*” or “*EPCRA*” means the federal Emergency Planning and Community Right-to-know Act as defined in section 30.1.

5. “*Environmental waste*” means a pollutant, waste, or release regardless of the type or existence of regulation and regardless of the media affected by the pollutant, waste, or release.

6. “*Existing toxics user*” means a toxics user installation or source constructed prior to July 1, 1991.

7. “*Multimedia*” means any combination of air, water, land, or workplace environments into which toxic substances or wastes are released.

8. “*Release*” means emission, discharge, or disposal into any environmental media including air, water, or land.

9. “*Toxics pollution prevention*” means employment of a practice which reduces the industrial use of toxic substances or reduces the environmental and health hazards associated with an environmental waste without diluting or concentrating the waste before the release, handling, storage, transport, treatment, or disposal of the waste. The term includes toxics pollution prevention techniques but does not include a practice which is applied to an environmental waste after the waste is generated or comes into existence on or after the waste exits a production or commercial operation.

“*Toxics pollution prevention*” does not include, promote, or require any of the following:

a. Waste burning in industrial furnaces, boilers, smelters, or cement kilns for the purpose of energy recovery.

b. The transfer of an environmental waste from one environmental medium to another environmental medium, the workplace environment, or a product.

c. Off-site waste recycling.

d. Any other method of end-of-pipe management of environmental wastes including waste exchange and the incorporation or embedding of regulated environmental wastes into products or by-products.

10. “*Toxics pollution prevention techniques*” means any of the following practices by a toxics user:

a. Input substitution, which refers to replacing a toxic substance or raw material used in a production process with a nontoxic or less toxic substance.

b. Product reformulation, which refers to sub-

stituting for an existing end product an end product which is nontoxic or less toxic upon use or release.

c. Production process redesign or modification, which refers to developing and using production processes of a different design other than those currently in use.

d. Production process modernization, which refers to upgrading or replacing existing production process equipment or methods with other equipment or methods based on the same production process.

e. Improved operation and maintenance of existing production process equipment and methods, which refers to modifying or adding to existing equipment or methods, including but not limited to, such techniques as improved housekeeping practices, system adjustments, product and process inspections, and production process control equipment or methods.

f. Recycling, reuse, or extended use of toxic substances by using equipment or methods which become an integral part of the production process.

11. “*Toxic substance*” means any chemical substance in a gaseous, liquid, or solid state which is identified as a reportable substance under the federal Resource Conservation and Recovery Act, EPCRA, or defined as a hazardous air pollutant under the Clean Air Act of 1990. However, “*toxic substance*” does not include a chemical substance present in the article; used as a structural component of a facility; present in a product used for routine janitorial or facility grounds maintenance; present in foods, drugs, cosmetics, or other personal items used by employees or other persons at a toxics user facility; present in process water or noncontact cooling water as drawn from the environment or from municipal sources; present in air used either as compressed air or as part of combustion; present in a pesticide or herbicide when used in agricultural applications; or present in crude, fuel, or lube oils for direct wholesale or retail sale.

12. “*Toxics*” means toxic substances.

13. “*Toxics user*” means a large quantity generator as defined pursuant to the federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. or a person required to report pursuant to Title III of the federal Superfund Amendments and Reauthorization Act of 1986.

14. “*Waste exchange*” means a method of end-of-pipe management of environmental wastes that involves the transfer of environmental wastes between businesses or facilities owned or operated by the same business for recovery or to serve a productive purpose.

2001 Acts, ch 7, §11
Subsection 3 amended

455B.517 Duties of land quality and waste management assistance division.

The land quality and 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 assis-

tance 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 clearinghouses 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.

2001 Acts, ch 7, §12
Unnumbered paragraph 1 amended

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 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. 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. 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). Except for fees required under sub-

section 4, paragraph "a", a planning area failing to meet the fifty percent goal is not required to remit any additional tonnage fees to the department.

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). Moneys 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.

For future amendment to subsection 3, see 2001 Acts, ch 124, §2, 6
Section not amended; footnote added

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 the report on a biennial basis to the governor in the same manner as provided in section 7A.3. The report shall include a proposal for the use of groundwater protection fund moneys, and uses of the groundwater protection fund moneys appropriated in the two previous fiscal years.

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) One hundred sixty-five thousand dollars to the land quality and 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 departmental duties required under section 135.11, subsections 20 and 21, and section 139A.21.

(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 land quality and 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 multi-state 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 or other efforts of the department to support permanent household hazardous material collection systems and special events for household hazardous material collection, 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. Repayment moneys from the Iowa business loan program for waste reduction and recycling pursuant to section 455B.310, subsection 2, paragraph "b", Code 1993, and discontinued pursuant to 1993 Iowa Acts, chapter 176, section 45, shall be placed into this account to support household hazardous materials programs of the department.

(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 139A.31.*

(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 moneys allocated for financial incentive programs, the department may reimburse landowners for engineering costs associated with voluntarily closing agricultural drainage wells. The financial incentives allocated for voluntary closing of agricultural drainage wells shall be provided on a cost-share basis which shall not exceed fifty percent of the estimated cost or fifty percent of the actual cost, whichever is less. Engineering costs do not include construction costs, including costs associated with earth moving.

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 139A.21. The remainder of the account shall be used to fund toxic clean-up 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 139A.21.

(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 conserva-

tion 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 thou-

sand 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 chemicals for environmental protection, energy conservation, and farm profitability; interactive public and farmer education; and applied studies on best management practices and best appropriate technology for chemical use efficiency and reduction.

(8) The following amounts are appropriated to the department of natural resources to continue the Big Spring demonstration project in Clayton county.

(a) For the fiscal period beginning July 1, 1987 and ending June 30, 1990, seven hundred thousand dollars is appropriated annually.

(b) For the fiscal period beginning July 1, 1990

and ending June 30, 1992, five hundred thousand dollars is appropriated annually.

(9) For the fiscal period beginning July 1, 1987 and ending June 30, 1990, one hundred thousand dollars is appropriated annually to the department of agriculture and land stewardship to implement a targeted education program on best management practices and technologies for the mitigation of groundwater contamination from or closure of agricultural drainage wells, abandoned wells, and sinkholes.

2001 Acts, ch 7, §13, 14; 2001 Acts, ch 24, §54; 2001 Acts, ch 124, §4; 2001 Acts, ch 129, §6

*Section 139A.21 probably intended; corrective legislation is pending

For future amendments to subsection 2, paragraph a, see 2001 Acts, ch 124, §3, 5, 6

See Code editor's note to §12.65

Subsection 1, unnumbered paragraph 3 amended

Subsection 2, paragraph a, subparagraph (1), subparagraph subdivision (b) amended

Subsection 2, paragraph a, subparagraph (2), subparagraph subdivision (a), subparagraph subdivision part (iv) amended

Subsection 2, paragraph a, subparagraph (2), subparagraph subdivision (f) amended

CHAPTER 455G

COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE TANK FUND

455G.2 Definitions.

As used in this chapter unless the context otherwise requires:

1. "Authority" means the Iowa finance authority created in chapter 16.

2. "Board" means the Iowa comprehensive petroleum underground storage tank fund board.

3. "Bond" means a bond, note, or other obligation issued by the authority for the fund and the purposes of this chapter.

4. "Claimant" means an owner or operator who has received assistance under the remedial account or who has coverage under the insurance fund with respect to a release, or an installer or inspector who has coverage under the insurance fund.

5. "Community remediation" means a program of coordinated testing, planning, or remediation, involving two or more tank sites potentially connected with a continuous contaminated area, pursuant to rules adopted by the board. A community remediation does not expand the scope of coverage otherwise available or relieve liability otherwise imposed under state or federal law.

6. "Corrective action" means an action taken to minimize, eliminate, or clean up a release to protect the public health and welfare or the environment. Corrective action includes, but is not limited to, excavation of an underground storage tank for the purposes of repairing a leak or removal of a tank, removal of contaminated soil, and cleans-

ing of groundwaters or surface waters. Corrective action does not include replacement of an underground storage tank or other capital improvements to the tank. Corrective action specifically excludes third-party liability. Corrective action includes the expenses incurred to prepare a site cleanup report for approval by the department of natural resources detailing the planned response to a release or suspected release, but not necessarily all actions proposed to be taken by a site cleanup report.

7. "Diminution" is the amount of petroleum which is released into the environment prior to its intended beneficial use.

8. "Diminution rate" is the presumed rate at which petroleum experiences diminution, and is equal to one-tenth of one percent of all petroleum deposited into a tank.

9. "Free product" means a regulated substance that is present as a nonaqueous phase liquid.

10. "Fund" means the Iowa comprehensive petroleum underground storage tank fund.

11. "Improvement" means the acquisition, construction, or improvement of any tank, tank system, or monitoring system in order to comply with state and federal technical requirements or to obtain insurance to satisfy financial responsibility requirements.

12. "Insurance" includes any form of financial assistance or showing of financial responsibility sufficient to comply with the federal Resource

Conservation and Recovery Act or the Iowa department of natural resources' underground storage tank financial responsibility rules.

13. "Insurance board" means the Iowa underground storage tank insurance board created under section 455G.11.

14. "Insurance premium" includes any form of premium or payment for insurance or for obtaining other forms of financial assurance, or showing of financial responsibility.

15. "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).

16. "Potentially responsible party" means a person who may be responsible or liable for a release for which the fund has made payments for corrective action or third-party liability.

17. "Precorrective action value" means the purchase price of the tank site paid by the owner after October 26, 1990.

18. "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or dispersing from an underground storage tank into groundwater, surface water, or subsurface soils.

19. "Small business" means a business that meets all of the following requirements:

- a. Is independently owned and operated.
- b. Owns at least one, but no more than twelve tanks at no more than two different tank sites.
- c. Has a net worth of four hundred thousand dollars or less.

20. "Tank" means an underground storage tank for which proof of financial responsibility is, or on a date definite will be, required to be maintained pursuant to the federal Resource Conservation and Recovery Act and the regulations from time to time adopted pursuant to that Act or successor Acts or amendments.

21. "Third-party liability" means both of the following:

- a. Property damage including physical injury to tangible property, but not including loss of use, other than costs to remediate.
- b. Bodily injury including sickness, bodily injury, illness, or death.

2001 Acts, ch 51, §4
Subsection 17 amended

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", and sections 455G.8, 455G.9, 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 fund 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 or fund 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 mon-

neys 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.

6. There is appropriated from the unassigned revenue fund administered by the Iowa comprehensive underground storage tank fund board to the following funds for the fiscal year beginning July 1, 2001, and ending June 30, 2002, the following amounts as specified:

- a. To the terminal liability health insurance fund created in section 421.46: \$ 9,000,000
- b. To the salary adjustment fund provided for in section 6 of this Act:* \$ 9,000,000

This subsection is repealed effective July 1, 2002.

2001 Acts, ch 190, §21
*2001 Acts, ch 190
NEW subsection 6

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, notwithstanding section 12C.7, interest earned by the marketability fund or other income specifical-

ly allocated to the marketability fund.

2. The marketability fund shall be used for the following purposes:

a. The innocent landowners fund shall be established as a separate fund in the state treasury under the control of the board. The innocent landowners fund shall 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 may be provided to the owner of a petroleum-contaminated property, or an owner or operator of an underground storage tank located on the property, who is not otherwise eligible to receive benefits under section 455G.9 due to the date on which the release causing the contamination was reported or the date the claim was filed. An owner of a petroleum-contaminated property, or an owner or operator of an underground storage tank located on the property, shall be eligible for payment of corrective action costs subject to copayment requirements under section 455G.9, subsection 4. 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, or an owner or operator of an underground storage tank located on the 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.

2001 Acts, ch 51, §3
Subsection 2, paragraph a amended

CHAPTER 456A

REGULATION AND FUNDING — NATURAL RESOURCES DEPARTMENT

456A.24 Specific powers.

The department is hereby authorized and empowered to:

1. Expend, as authorized by the general assembly under section 456A.19, any and all moneys accruing to the fish and game protection fund from any and all sources in carrying out the purposes of this chapter; any Act, or Acts, not consistent with this provision are hereby repealed so far as they may apply to the fish and game protection fund.

2. Acquire by purchase, condemnation, lease, agreement, gift, and devise lands or waters suit-

able for the purposes hereinafter enumerated, and rights of way thereto, and to maintain the same for the following purposes, to wit:

a. Public hunting, fishing, and trapping grounds and waters to provide areas in which any person may hunt, fish, or trap in accordance with the law and the rules of the department;

b. Fish hatcheries, fish nurseries, game farms, and wild mammal, fish, bird, reptile, and amphibian refuges.

3. Extend and consolidate lands or waters suitable for the above purposes by exchange for

other lands or waters and to purchase, erect, and maintain buildings necessary to the work of the department.

4. Capture, propagate, buy, sell, or exchange any species of wild mammal, fish, bird, reptile, and amphibian needed for stocking the lands or waters of the state, and to feed, provide for, and care for them.

5. The department is hereby authorized to adopt and enforce such departmental rules governing procedure as may be necessary to carry out the provisions of this chapter; also to carry out any other laws the enforcement of which is vested in the department.

6. The department is hereby further authorized to adopt, publish, and enforce such administrative orders as are authorized in section 481A.38.

7. Pay the salaries, wages, compensation, traveling, and other necessary expenses of the commissioners, director, officers, and other employees of the department, and to expend money for necessary supplies and equipment, and to make such other expenditures as may be necessary for the carrying into effect the purposes of this chapter.

8. Control by shooting or trapping any wild mammal, fish, bird, reptile, and amphibian for the purpose of preventing the destruction of or damage to private or public property, but shall not go upon private property for that purpose without the consent of the owner or occupant.

9. Provide for the protection against fire and other destructive agencies on state and privately owned forests, parks, wildlife areas, and other property under its jurisdiction, and cooperate with federal and other state agencies in protection programs approved by the department, and with the consent of the owner, on privately owned areas.

10. Provide conservation employees, when on duty, suitable uniforms, equipment, arms, and supplies.

11. Establish a program governing the harvesting and sale of American ginseng subject to the convention on international trade in endangered species of wild fauna and flora and adopt rules providing for the time and conditions for harvesting the ginseng, the registration of dealers and exporters, the records kept by dealers and exporters, and the certification of legal taking. The time for harvesting of wild ginseng shall not begin before September 1 or extend beyond November 1. A person violating this subsection or rules adopted by the department pursuant to this subsection is subject to a scheduled fine pursuant to section 805.8B, subsection 4.

12. Adopt rules authorizing officers and employees of the department who are peace officers to issue warning citations for violations of this chapter and chapters 321G, 350, 456B, 457A, 461A through 461C, 462A, 462B, 463B, 464A,

465A through 465C, 481A, 481B, 482, 483A, 484A, and 484B.

13. Apply to any appropriate agency or officer of the United States government to participate in or receive aid from any federal program relating to forests or forestry management. The department may enter into contracts and agreements with the United States government or an appropriate agency of the United States government as necessary to secure funding for the acquisition, development, improvement, and management of forests and forestry resources and to provide funds or assistance to local governments or private citizens involved in forestry management. In connection with obtaining the benefits of a forestry program, the director shall coordinate the department's activities with and represent the interests of all state agencies and the political subdivisions of the state having interests in forests or forestry management.

14. Enter into an interstate wildlife violators compact with one or more states to enforce state laws and rules relating to the protection and conservation of wildlife subject to the requirements of section 28E.9. The commission may adopt rules as necessary for the implementation of the compact.

2001 Acts, ch 14, §1; 2001 Acts, ch 137, §5
NEW subsection 14
Internal reference change applied

456A.37 Eurasian water milfoil.

1. *Definitions.* As used in this section:

a. "*Infestation of Eurasian water milfoil*" means an infestation of Eurasian water milfoil that occupies more than twenty percent of the littoral area of a body of water.

b. "*Watercraft*" means any vessel which through the buoyance of water floats upon the water and is capable of carrying one or more persons.

2. *Eurasian water milfoil management plan.* Before January 1, 1998, the commission shall prepare a long-term statewide Eurasian water milfoil management plan. The plan shall address all of the following:

a. The detection and prevention of accidental introductions into the state of Eurasian water milfoil.

b. A public awareness campaign regarding Eurasian water milfoil.

c. The control and eradication of Eurasian water milfoil in public waters.

d. The development of a plan of containment strategies that at a minimum shall include all of the following:

(1) The participation by lake associations, local citizens groups, and local units of government in the development and implementation of lake management plans where Eurasian water milfoil exists.

(2) Notice to travelers of the penalties for violation of laws relating to Eurasian water milfoil.

3. *Grants.* The director of the department of natural resources shall accept gifts, donations, and grants to aid in accomplishing the control and eradication of Eurasian water milfoil.

4. *Rulemaking.* The commission shall adopt rules pursuant to chapter 17A. The rules shall:

a. Restrict the introduction, propagation, use, possession, and spread of Eurasian water milfoil.

b. Identify bodies of water with infestation of Eurasian water milfoil. The department shall require that bodies of water be posted as infested. The department may prohibit boating, fishing, swimming, and trapping in infested bodies of water.

5. *Prohibitions.*

a. A person shall not do any of the following:

(1) Transport Eurasian water milfoil on a public road.

(2) Place a trailer or launch a watercraft with Eurasian water milfoil attached in public waters.

(3) Operate a watercraft in a marked Eurasian water milfoil infestation area.

b. The penalty for violating this subsection is contained in section 805.8B, subsection 5.

2001 Acts, ch 137, §5

Internal reference change applied

CHAPTER 461A

PUBLIC LANDS AND WATERS

461A.6 Costs — lien.

The cost of such removal shall be paid by the owner of said pier, wharf, sluice, piling, wall, fence, obstruction, erection or building, and the state shall have a lien upon the property removed for such costs. Said costs shall be payable at the time of removal and such lien may be enforced and foreclosed, as provided for the foreclosure of security interests in uniform commercial code, chapter 554, article 9, part 6.

2000 Acts, ch 1149, §170, 187

2000 amendments to this section are effective July 1, 2001; 2000 Acts, ch 1149, §187

Section amended

461A.36 Speed limit.

The maximum speed limit of all vehicles on state park and preserve drives, roads and highways shall be thirty-five miles per hour. All driving shall be confined to designated roadways. Whenever the commission shall determine that the speed limit hereinbefore set forth is greater than is reasonable or safe under the conditions found to exist at any place of congestion or upon any part of the park roads, drives or highways, said commission shall determine and declare a reasonable and safe speed limit thereat which shall be effective when appropriate signs giving notice thereof are erected at such places of congestion or other parts of the park roads, drives or highways.

For applicable scheduled fine, see §805.8A, subsection 5

Section not amended; footnote added

461A.38 Parking.

All vehicles shall be parked in designated parking areas, and no vehicle shall be left unattended on any state park or preserve drive, road or highway, except in the case of an emergency.

For applicable scheduled fine, see §805.8A, subsection 1, paragraph a

Section not amended; footnote added

461A.39 Hitching to trees.

No horse or other animal shall be hitched or tied to any tree or shrub, or in such a manner as to result in injury to state property.

For applicable scheduled fine, see §805.8B, subsection 6, paragraph a

Section not amended; footnote added

461A.40 Fires.

No fires shall be built, except in a place provided therefor, and such fire shall be extinguished when site is vacated unless it is immediately used by some other party.

For applicable scheduled fine, see §805.8B, subsection 6, paragraph b

Section not amended; footnote added

461A.43 Littering grounds.

No person shall place any waste, refuse, litter or foreign substance in any area or receptacle except those provided for that purpose.

For applicable scheduled fine, see §805.8B, subsection 6, paragraph b

Section not amended; footnote added

461A.44 Prohibited areas.

No person shall enter upon portions of any state park or preserve in disregard of official signs forbidding same, except by permission of the director or the director's representative.

For applicable scheduled fine, see §805.8B, subsection 6, paragraph c

Section not amended; footnote added

461A.45 Animals on leash.

No privately owned animal shall be allowed to run at large in any state park or preserve or upon lands or in waters owned by or under the jurisdiction of the commission except by permission of the commission. Every such animal shall be deemed as running at large unless the owner carries such animal or leads it by a leash or chain not exceeding six feet in length, or keeps it confined in or attached to a vehicle.

For applicable scheduled fine, see §805.8B, subsection 6, paragraph a

Section not amended; footnote added

461A.46 Closing time.

Except by arrangement or permission granted by the director or the director's authorized representative, all persons shall vacate state parks and preserves before ten-thirty o'clock p.m. Areas may be closed at an earlier or later hour, of which notice shall be given by proper signs or instructions. The provisions of this section shall not apply to authorized camping in areas provided for that purpose.

For applicable scheduled fine, see §805.8B, subsection 6, paragraph b
Section not amended; footnote added

461A.48 Camping areas.

No person shall camp in any portion of a state park or preserve except in portions prescribed or designated by the commission.

For applicable scheduled fine, see §805.8B, subsection 6, paragraph d
Section not amended; footnote added

461A.49 Time limit.

No camping unit shall be permitted to camp for a period longer than that designated by the commission for the specific state park or preserve, and in no event longer than for a period of two weeks.

For applicable scheduled fine, see §805.8B, subsection 6, paragraph b
Section not amended; footnote added

461A.50 Registering — vacating.

Any person who camps in any state park or preserve shall register the person's name and address with the park custodian and advise the custodian when the camp is vacated.

For applicable scheduled fine, see §805.8B, subsection 6, paragraph a
Section not amended; footnote added

CHAPTER 462A

WATER NAVIGATION REGULATIONS

462A.4 Operation of unnumbered vessels prohibited.

Every vessel except as provided in sections 462A.6 and 462A.6A on the waters of this state under the jurisdiction of the commission shall be numbered. A person shall not operate, maintain or give permission for the operation or maintenance of any vessel on such waters unless the vessel is numbered in accordance with this chapter or in accordance with applicable federal laws or in accordance with a federally approved numbering system of another state and unless the certificate of number awarded to the vessel is in full force and effect.

For applicable scheduled fines, see §805.8B, subsection 1, paragraph b
Section not amended; footnote added

462A.5 Registration and identification number.

1. The owner of each vessel required to be numbered by this state shall register it every two years with the county recorder of the county in which the owner resides, or, if the owner is a non-resident, the owner shall register it in the county in which such vessel is principally used. The commission shall have supervisory responsibility over the registration of all vessels and shall provide each county recorder with registration forms and certificates and shall allocate identification numbers to each county.

The owner of the vessel shall file an application for registration with the appropriate county recorder on forms provided by the commission. The application shall be completed and signed by the owner of the vessel and shall be accompanied by the appropriate fee, and the writing fee specified in section 462A.53. Upon applying for registra-

tion, the owner shall display a bill of sale, receipt, or other satisfactory proof of ownership as provided by the rules of the commission to the county recorder. Upon receipt of the application in approved form accompanied by the required fees, the county recorder shall enter it upon the records of the recorder's office and shall issue to the applicant a pocket-size registration certificate. The certificate shall be executed in triplicate, one copy to be delivered to the owner, one copy to the commission, and one copy to be retained on file by the county recorder. The registration certificate shall bear the number awarded to the vessel, the passenger capacity of the vessel, and the name and address of the owner. In the use of all vessels except nonpowered sailboats, nonpowered canoes, and commercial vessels, the registration certificate shall be carried either in the vessel or on the person of the operator of the vessel when in use. In the use of nonpowered sailboats, nonpowered canoes, or commercial vessels, the registration certificate may be kept on shore in accordance with rules adopted by the commission. The operator shall exhibit the certificate to a peace officer upon request or, when involved in a collision or accident of any nature with another vessel or other personal property, to the owner or operator of the other vessel or personal property.

On all vessels except nonpowered sailboats the owner shall cause the identification number to be painted on or attached to each side of the bow of the vessel in such size and manner as may be prescribed by the rules of the commission. On nonpowered boats the number may be placed at alternate locations as prescribed by the rules of the commission. All numbers shall be maintained in a legible condition at all times.

No number, other than the number awarded to a vessel under the provisions of this chapter or granted reciprocity pursuant to this chapter, shall be painted, attached or otherwise displayed on either side of the bow of such vessel.

The owner of each vessel must display and maintain, in a legible manner and in a prominent spot on the exterior of such vessel, other than the bow, the passenger capacity of the vessel which must conform with the passenger capacity designated on the registration certificate.

2. When an agency of the United States government shall have in force an overall system of identification numbering for vessels, the numbering system prescribed by the commission pursuant to this chapter, shall be in conformity therewith.

3. The registration fees for vessels subject to this chapter are as follows:

a. For vessels of any length without motor or sail, five dollars.

b. For motorboats or sailboats less than twelve feet in length, eight dollars.

c. For motorboats or sailboats twelve feet or more, but less than fifteen feet in length, ten dollars.

d. For motorboats or sailboats fifteen feet or more, but less than eighteen feet in length, twelve dollars.

e. For motorboats or sailboats eighteen feet or more, but less than twenty-five feet in length, eighteen dollars.

f. For motorboats or sailboats twenty-five feet in length or more, twenty-eight dollars.

Every registration certificate and number issued becomes delinquent at midnight April 30 of odd-numbered years unless terminated or discontinued in accordance with this chapter. After January 1 in odd-numbered years, an unregistered vessel and a renewal of registration may be registered for the two-year registration period beginning May 1 of that year. After January 1 in even-numbered years, unregistered vessels may be registered for the remainder of the current registration period at fifty percent of the appropriate registration fee.

If a timely application for renewal is made, the applicant shall receive the same registration number allocated to the applicant for the previous registration period. If the application for registration for the biennium is not made before May 1 of each odd-numbered year, the applicant shall be charged a penalty of five dollars.

4. If a person, after registering a vessel, moves from the address shown on the registration certificate, the person shall, within ten days, notify the county recorder in writing of the old and new address. If appropriate, the county recorder shall forward all past records of the vessel to the recorder of the county in which the owner resides.

If the name of a person, who has registered a

vessel, is changed, the person shall, within ten days, notify the county recorder of the former and new name.

No fee shall be paid to the county recorder for making the changes mentioned in this subsection, unless the owner requests a new registration certificate showing the change, in which case a fee of one dollar plus a writing fee shall be paid to the recorder.

If a registration certificate is lost, mutilated or becomes illegible, the owner shall immediately make application for and obtain a duplicate registration certificate by furnishing information satisfactory to the county recorder.

A fee of one dollar plus a writing fee shall be paid to the county recorder for a duplicate registration certificate.

If a vessel, registered under this chapter, is destroyed or abandoned, the destruction or abandonment shall be reported to the county recorder and the registration certificate shall be forwarded to the office of the county recorder within ten days after the destruction or abandonment.

5. All records of the commission and the county recorder, other than those declared by law to be confidential for the use of the commission and the county recorder, shall be open to public inspection during office hours.

6. The owner of each vessel which has a valid marine document issued by the bureau of customs of the United States government or any federal agency successor thereto shall register it every two years with the county recorder in the same manner prescribed for undocumented vessels and shall cause the registration validation decal to be placed on the vessel in the manner prescribed by the rules of the commission. When the vessel bears the identification required in the documentation, it is exempt from the placement of the identification numbers as required on undocumented vessels. The fee for such registration is twenty-five dollars plus a writing fee.

7. If the owner of a currently registered vessel places the vessel in storage, the owner shall return the registration certificate to the county recorder with an affidavit stating that the vessel is placed in storage and the effective date of the storage. The county recorder shall notify the commission of each registered vessel placed in storage. When the owner of a stored vessel desires to renew the vessel's registration, the owner shall apply to the county recorder and pay the registration fees plus a writing fee as provided in subsections 1 and 3 without penalty. No refund of registration fees shall be allowed for a stored vessel.

8. The registration certificate shall indicate if the vessel is subject to the requirement of a certificate of title and the county from which the certificate of title is issued.

For applicable scheduled fines, see §805.8B, subsection 1, paragraph A. Section not amended; footnote added

462A.9 Classification and required equipment.

1. Vessels subject to the provisions of this chapter shall be divided into four classes as follows:

Class I. Less than sixteen feet in length.

Class II. Sixteen feet or over and less than twenty-six feet in length.

Class III. Twenty-six feet or over and less than forty feet in length.

Class IV. Forty feet or over.

2. Every vessel, in all weathers, from sunset to sunrise, shall carry and exhibit the following lights when underway, and during that time shall exhibit no other lights which may be mistaken for those required except that the international lighting system as approved by the United States coast guard will be accepted for use on motorboats on the waters of this state.

a. Every motorboat of classes I and II shall carry the following lights:

(1) A bright white light aft to show all around the horizon.

(2) A combined lantern in the fore part of the vessel and lower than the white light aft, showing green to starboard and red to port, so fixed as to throw the light from right ahead to two points abaft the beam on their respective sides.

b. Every motorboat of classes III and IV shall carry the following lights:

(1) A bright white light in the fore part of the vessel as near the bow as practicable, so constructed as to show an unbroken light over an arc of the horizon of twenty points of the compass, so fixed as to throw the light ten points on each side of the vessel; namely, from right ahead to two points abaft the beam on either side.

(2) A bright white light aft to show all around the horizon and higher than the white light forward.

(3) A green light on the starboard side so constructed as to show an unbroken light over an arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the starboard side. A red light on the port side, so constructed as to show an unbroken light over an arc of the horizon of ten points of the compass so fixed as to throw the light from right ahead to two points abaft the beam on the port side. The said side lights shall be fitted with inboard screens of sufficient height so set as to prevent these lights from being seen across the bow.

c. Vessels of classes I and II, when propelled by sail alone, shall carry the combined lantern, but not the white light aft prescribed by this section. Vessels of classes III and IV when so propelled, shall carry the colored side lights, suitably screened, but not the white lights required by this section.

d. Every white light required by this section

shall be of such character as to be visible at a distance of at least two miles. Every colored light required by this section shall be of such character as to be visible at a distance of at least one mile. The term "*visible*" in this section, when applied to lights, shall mean visible on a dark night with clear atmosphere.

e. When propelled by sail and machinery, such motorboat shall carry the lights required by this section for a motorboat propelled by machinery only.

3. Every vessel shall carry and exhibit such other lights required by the rules and regulations of the commission.

4. Every motorboat of class II, III or IV shall be provided with an efficient whistle or other sound producing appliance.

5. Every motorboat of class III or IV shall be provided with an efficient bell.

6. Every vessel shall carry at least one life preserver, life belt, ring buoy or other device, of the sort prescribed by the rules of the commission, for each passenger, so placed as to be readily accessible. This does not apply to a vessel which is a racing shell used in the sport of sculling or to a sailboard while used for windsurfing.

7. Every motorboat shall be provided with such number, size and type of fire extinguishers capable of promptly and effectually extinguishing burning gasoline, as may be prescribed by the regulations of the commission. Such fire extinguishers shall, at all times, be kept in condition for immediate and effective use and shall be so placed as to be readily accessible. Vessels powered by outboard motors of ten horsepower or less, need not carry the extinguishers as provided herein.

8. The provisions of subsections 4, 5 and 7 of this section shall not apply to motorboats while competing in any race conducted pursuant to section 462A.16 or, if such boats are designed and used solely for racing, while engaged in such navigation as is incidental to the tuning up of the boats and engines for the race.

The operator of a motorboat, while engaged in such race, must wear a crash helmet and life preserver.

9. Every motorboat shall have the carburetor or carburetors of every engine therein, except outboard motors, using a liquid of a volatile nature as fuel, equipped with such efficient flame arrestor, backfire trap or other similar device as may be prescribed by the rules and regulations of the commission.

10. Every motorboat, except open boats, using any liquid of a volatile nature as fuel, shall be provided with the means prescribed by the rules of the commission for properly and efficiently ventilating the bilges of the engines and fuel tank compartments so as to remove any explosive or flammable gases.

11. The commission is hereby authorized to make rules and regulations modifying the equipment requirements contained in this section to the extent necessary for the safety of operators and passengers.

12. The commission is hereby authorized to establish such pilot rules as may be necessary for the safe operation of vessels on the waters of this state under the jurisdiction of the commission.

13. No person shall operate or give permission for the operation of a vessel which is not equipped as required by this section or modification thereof.

For applicable scheduled fines, see §805.8B, subsection 1, paragraphs a and b

Section not amended; footnote added

462A.10 Boat liveries.

1. The owner of a boat livery shall cause to be kept a record of the name and address of the person or persons hiring any vessel which is designed or permitted by the owner to be operated for hire, the identification number thereof, the departure date and time and the expected time of return. The records shall be preserved for six months.

2. The owner of a boat livery shall not permit any of the owner's vessels, operated for hire, to depart from the owner's premises unless it shall have been provided, either by the owner or renter, with the equipment required by the commission.

For applicable scheduled fines, see §805.8B, subsection 1, paragraph b

Section not amended; footnote added

462A.11 Muffling devices.

The exhaust of every internal combustion engine used on any motorboat shall be effectively muffled by equipment so constructed and used as to muffle the total vessel noise in a reasonable manner in accordance with rules adopted by the commission. The use of cut-outs is prohibited, except for motorboats competing in a regatta or boat race approved as provided in section 462A.16 and for such motorboats while on trial run during a period from 8:00 a.m. to 6:00 p.m. not to exceed twenty-four hours immediately preceding such regatta or race.

For applicable scheduled fines, see §805.8B, subsection 1, paragraph b

Section not amended; footnote added

462A.12 Prohibited operation.

1. No person shall operate any vessel, or manipulate any water skis, surfboard or similar device in a careless, reckless or negligent manner so as to endanger the life, limb or property of any person.

2. A person shall not operate any vessel, or manipulate any water skis, surfboard or similar device while under the influence of an alcoholic beverage, marijuana, a narcotic, hypnotic or other drug, or any combination of these substances. However, this subsection does not apply to a person operating any vessel or manipulating any water skis, surfboard or similar device while under the influence of marijuana, or a narcotic, hypnotic

or other drug if the substances were prescribed for the person and have been taken under the prescription and in accordance with the directions of a medical practitioner as defined in chapter 155A, provided there is no evidence of the consumption of alcohol and further provided the medical practitioner has not directed the person to refrain from operating a motor vehicle, any vessel or from manipulating any water skis, surfboard or similar device.

3. No person shall place, cause to be placed, throw or deposit onto or in any of the public waters, ice or land of this state any cans, bottles, garbage, rubbish, and other debris.

4. No person shall operate on the waters of this state under the jurisdiction of the conservation commission any vessel displaying or reflecting a blue light or flashing blue light unless such vessel is an authorized emergency vessel.

5. No person shall operate a vessel and enter into areas in which search and rescue operations are being conducted or an area affected by a natural disaster unless authorized by the officer in charge of the search and rescue or disaster operation. Any person authorized in an area of operation shall operate the person's vessel at a no wake speed and shall keep clear of all other vessels engaged in the search and rescue or disaster operation. A person who must operate a vessel in a disaster area to gain access or egress from the person's home shall be considered an authorized person by the officer in charge.

6. No owner or operator of any vessel propelled by a motor of more than six horsepower shall permit any person under twelve years of age to operate such vessel except when accompanied by a responsible person of at least eighteen years of age who is experienced in motorboat operation.

7. A person shall not operate watercraft in a manner which unreasonably or unnecessarily interferes with other watercraft or with the free and proper navigation of the waters of the state. Anchoring under bridges, in a heavily traveled channel, in a lock chamber, or near the entrance of a lock constitutes such interference if unreasonable under the prevailing circumstances.

8. A person shall not operate a vessel in violation of restrictions as given by state-approved buoys or signs marking an area.

9. A person shall not operate on the waters of this state under the jurisdiction of the commission a vessel equipped with an engine of greater horsepower rating than is designated for the vessel by the federally required capacity plate or by the manufacturer's plate on those vessels not covered by federal regulations.

10. A person shall not leave an unattended vessel tied or moored to a dock which is placed immediately adjacent to a public boat launching ramp or to a dock which is posted for loading and unloading.

11. A person shall not operate a vessel within

fifty feet of a diver's flag placed in accordance with the rules of the commission adopted under chapter 17A.

For applicable scheduled fines, see §805.8B, subsection 1, paragraph c Section not amended; footnote added

462A.15 Water skis and surfboards.

1. No person shall operate a vessel on any waters of this state under the jurisdiction of the commission for towing a person or persons on water skis, surfboard or similar device unless there is in such vessel a responsible person, in addition to the operator, in a position to observe the progress of the person or persons being towed.

2. The provisions of subsections 1 and 2 of this section do not apply to a performer engaged in a professional exhibition or a person or persons engaged in a professional exhibition or a person or persons engaged in an activity authorized under section 462A.16.

For applicable scheduled fines, see §805.8B, subsection 1, paragraph c Section not amended; footnote added

462A.17 Local regulations restricted.

1. This chapter and other applicable laws of this state govern the operation, equipment, numbering and all other matters relating thereto of any vessel whenever the vessel is operated or maintained on the waters of this state under the jurisdiction of the commission, but this chapter does not prevent the adoption of any ordinance or local law relating to the operation or equipment of vessels. Such ordinances or local law are operative only so long as they are not inconsistent with this chapter or the rules adopted by the commission.

2. Any subdivision of this state may, but only after public notice thereof by publication in a newspaper having a general circulation in such subdivision, make formal application to the commission for special rules and regulations concerning the operation of vessels on any waters within its territorial limits and shall set forth therein the reasons which make such special rules or regulations necessary or appropriate.

3. The commission, upon application of local authorities, may make special rules in conformity with this chapter, concerning the operation of vessels on any waters of this state under the jurisdiction of the commission within the territorial limits of any subdivision of this state. Special rules shall only be adopted upon a finding by the commission that the rules are necessary to carry out the policies and purposes of this chapter due to special conditions with regard to a particular body of water and that the special rules provide greater protection to the public health, safety, and welfare than the rules of general application.

For applicable scheduled fines, see §805.8B, subsection 1, paragraph c Section not amended; footnote added

462A.24 Overloading of vessels.

No person owning or operating a vessel shall

permit said vessel to be occupied by more passengers and crew than the registration capacity permits.

For applicable scheduled fine, see §805.8B, subsection 1, paragraph c Section not amended; footnote added

462A.26 Right-of-way rules — speed and distance rules — zoning water areas.

1. Vessel traffic shall be governed by the following rules:

a. Passing from rear — keep to the operator's left.

b. Passing head on — keep to the operator's right.

c. Passing at right angles — vessel at the right has the right-of-way.

d. Manually propelled vessels have the right-of-way over all other vessels.

e. Sailboats have the right-of-way over all motor driven vessels. Motorboats, when meeting or overtaking sailboats, shall always pass on the leeward side.

f. Any vessel backing from a landing has the right-of-way over incoming vessels.

g. When necessary to protect the public health, safety, and welfare due to the physical nature and characteristics of any waters under the jurisdiction of the commission, the commission may promulgate further rules governing vessel traffic on such waters.

2. The commission may adopt rules governing all activities on waters and ice of this state under the jurisdiction of the commission, including impoundments constructed by or in cooperation with the federal government, when necessary and desirable to permit appropriate utilization of specific water areas, consistent with section 462A.3. The rules may include rules relating to the following:

a. Zoning as to area, activity, vessel, or vehicle, speed, and time of day during which specified activities are permitted.

b. Horsepower, size, and types of vessels and vehicles which may be operated.

c. Safety precautions and practices required.

3. Except as provided in special rules promulgated under this chapter, the following speed and distance regulations apply:

a. On all waters under the jurisdiction of the commission:

(1) A motorboat shall not be operated at speeds greater than five miles per hour when within one hundred feet of another craft traveling at five miles per hour or less.

(2) Motorboats shall maintain a minimum passing or meeting distance of fifty feet when both boats are traveling at speeds greater than five miles per hour.

(3) A motorboat shall not be operated at a speed exceeding ten miles per hour unless vision is unobstructed at least two hundred feet ahead.

b. On all inland lakes and federal impoundments under the jurisdiction of the commission.

A motorboat shall not be operated within three hundred feet of shore at a speed greater than ten miles per hour.

For applicable scheduled fines, see §805.8B, subsection 1, paragraph b
Section not amended; footnote added

462A.27 Removal of nonpermanent structures.

Every structure, not considered a permanent structure by the commission or excepted by the rules of the commission, shall be removed from the waters, ice, or land of this state under the jurisdiction of the commission on or before December 15 of each year. Failure to comply with this section shall cause the structure to be declared a public nuisance and disposition shall be in accordance with sections 483A.32 to 483A.34.

For applicable scheduled fine, see §805.8B, subsection 1, paragraph d
Section not amended; footnote added

462A.28 Unworthy vessels drydocked.

A person shall not place or allow to remain in the waters of this state under the jurisdiction of the commission, any vessel which has failed to pass inspection. All vessels shall be seaworthy for the waters on which they are being used.

For applicable scheduled fines, see §805.8B, subsection 1, paragraph d
Section not amended; footnote added

462A.31 Artificial lakes.

1. Except as provided in rules adopted under this chapter, a motorboat shall not be permitted on any artificial lake under the jurisdiction of the commission except the following:

- a. A motorboat equipped with one or more outboard battery operated electric trolling motors.
- b. A motorboat equipped with any power unit mounted or carried aboard the vessel may be operated at a no-wake speed on all artificial lakes of more than one hundred acres in size under the custody of the department. However, on lake Macbride, a motorboat with a power unit exceeding ten horsepower may be operated only when permitted by rule and the rule shall not authorize such use during the period beginning on the Friday before Memorial Day and ending on Labor Day inclusive. This paragraph does not limit motorboat horsepower on natural lakes under the custody of the department or limit the department's authority to establish special speed zoning regulations.

2. All privately owned vessels on artificial lakes under the jurisdiction of the commission shall be kept at locations designated by the commission.

3. All privately owned vessels, used on or kept at the artificial lakes under the jurisdiction of the commission, shall be seaworthy for the waters where they are kept and used. All such vessels shall be removed from state property whenever ordered by the commission, and, in any event, shall be removed from such property not later than December 15 of each year.

4. Upon construction of an artificial lake by a political subdivision of this state, the subdivision may, after publication in a newspaper of general circulation in the subdivision, make formal application to the commission for special rules relating to the operation of watercraft on the lake, and shall set forth therein the reasons which make such special rules necessary or appropriate. The commission may promulgate the special rules as provided in this chapter, concerning the operation of watercraft on a lake constructed and maintained by a subdivision of this state. Such special rules may include the following:

- a. Zoning by area and time to regulate navigation and other types of activity.
- b. Regulating the horsepower, size and type of watercraft.

5. As provided in section 350.5, county conservation boards may make regulations concerning horsepower limits and no-wake speeds on artificial lakes under their jurisdiction, except for state-owned artificial lakes managed by a county conservation board under a management agreement.

For applicable scheduled fines, see §805.8B, subsection 1, paragraphs b and e
Section not amended; footnote added

462A.32 Rules for buoys.

1. No private buoy shall be maintained in the waters of this state under the jurisdiction of the commission except as specified by the rules of the commission.

2. No other obstruction of any kind shall be maintained in the waters of this state under the jurisdiction of the commission without first receiving permission from the commission to maintain such obstruction.

3. It is unlawful to tamper with, move or attempt to move or, except in an emergency, moor a vessel to any waterway marker or state-approved buoy or sign.

4. No boat shall be anchored away from the shore and left unguarded unless it is attached to a legal buoy.

For applicable scheduled fines, see §805.8B, subsection 1, paragraph d
Section not amended; footnote added

462A.33 Driving over ice.

A craft or vehicle operating on the surface of ice on the lakes and streams of this state including boundary streams and lakes and propelled by sail or by machinery in whole or in part, except automobiles, motorcycles and trucks registered under chapter 321 or snowmobiles registered under chapter 321G when they are used without endangering public safety, shall not be operated without a permit issued by the commission for the operation. A permit may be revoked by the commission if the craft or vehicle is operated in a careless manner which endangers others. Except when authorized by a permit for a special event, automobiles, motorcycles, and trucks when used on the ice of

waters under the jurisdiction of the commission shall not exceed fifteen miles per hour and shall be operated in a reasonable and prudent manner.

For applicable scheduled fines, see §805.8B, subsection 1, paragraph b
Section not amended; footnote added

462A.34 Authorized emergency vessels.

Upon approach of an authorized emergency vessel displaying a blue light or flashing blue light, the operator of every other vessel shall stop and yield the right-of-way until the authorized vessel has passed. The provisions of this section shall not relieve the operator of an authorized emergency vessel from the duty to operate the vessel with due regard for the safety of all persons using the waters of this state, nor shall the provisions relieve the operator of any such vessel from liability from the operator's negligence.

For applicable scheduled fines, see §805.8B, subsection 1, paragraph a
Section not amended; footnote added

462A.35 Special certificate for manufacturer or dealer.

A manufacturer or dealer owning, storing, repairing, or altering a vessel required to be registered under this chapter may operate the vessel for purposes of transporting, testing, demonstrat-

ing, or selling the vessel without registering each such vessel, provided that any such vessel displays thereon a special certificate issued to the manufacturer or dealer as provided in this chapter. This special certificate shall not be used for any vessel offered for hire or for any work or service vessels owned by a manufacturer or dealer.

For applicable scheduled fines, see §805.8B, subsection 1, paragraph a
Section not amended; footnote added

462A.37 Number assigned — special signs.

The commission, upon granting any such application, shall issue to the applicant a special certificate containing the applicant's name and address, the general distinguishing number assigned to the applicant, the word "*manufacturer*" or "*dealer*", and such other information as the commission may prescribe. The manufacturer or dealer shall have the number so awarded printed upon or attached to a removable sign or signs to be temporarily but firmly mounted upon or attached to the vessel being used, and the display must meet the requirements of this chapter and the rules and regulations of the commission.

For applicable scheduled fines, see §805.8B, subsection 1, paragraph a
Section not amended; footnote added

CHAPTER 466

IMPROVEMENT OF WATERSHED ATTRIBUTES

466.7 Water quality protection program.

1. The department of agriculture and land stewardship shall implement, in conjunction with the federal government and other entities, a program that provides multiobjective resource protections for flood control, water quality, erosion control, and natural resource conservation.

2. The department of agriculture and land stewardship shall implement a statewide, voluntary farm management demonstration program to demonstrate the effectiveness and adaptability of emerging practices in agronomy that protect water resources and provide other environmental benefits. A demonstration program under this subsection may complement, but shall not duplicate, projects conducted by Iowa state university extension service. The demonstration program shall be designed to concentrate on management techniques in both the livestock and crop genres and shall be offered to farm operators through an educational setting and demonstration projects. The demonstration program shall be offered in conjunction with the community colleges, Iowa state university, and private farmer demonstrations. Continuing education units shall be offered. The educational program shall be offered at no cost to farm operators who file a schedule F with the internal revenue service and do not have per-

mitted livestock facilities or are certified under a manure management plan.

3. The department of agriculture and land stewardship shall provide financial assistance for the establishment of permanent soil and water conservation practices.

4. The department of natural resources shall provide local watershed managers with geographic information system data for their use in developing, monitoring, and displaying results of their watershed work. The local watershed data shall be considered public records and are accessible to the public pursuant to chapter 22.

5. The department of natural resources shall develop a program that provides support to local volunteer management efforts to the different programs concerned with water quality. The department shall assist in coordinating and tracking of the volunteer component of these programs to increase efficiency and avoid duplication of efforts in water quality monitoring and watershed improvement.

6. The department of natural resources shall provide for activities supporting the analysis of water quality monitoring data for trends and for the preparation and presentation of data to the public.

7. The department of natural resources shall

contract to assist its staff with the review of national pollutant discharge elimination system permits.

8. The department of natural resources shall expand floodplain protection education to better inform local officials that make decisions with regard to floodplain management.

9. The department of natural resources shall continue the establishment of an effective and efficient method of developing a total maximum daily load program, based on information gathered on other states' programs and investigation into alternative methods for satisfying the requirements.

2001 Acts, ch 37, §1, 4
Subsection 4 stricken and former subsections 5 – 10 renumbered as 4 – 9

466.8 On-site wastewater systems assistance program.

The department of natural resources shall establish an on-site wastewater systems assistance program for the purpose of providing low-interest loans to homeowners residing outside the boundaries of a city for improving on-site wastewater disposal systems.

1. The environmental protection commission shall adopt rules for carrying out the program including but not limited to criteria for homeowner participation, the methods used to provide loans, and financing terms and limits.

2. The department may make and execute agreements with public or private entities, including lending institutions as defined in section 12.32, as required to administer the program.

3. Assistance provided to homeowners shall not be used to pay the nonfederal share of the cost of any wastewater system projects receiving grants under the federal Clean Water Act, 33 U.S.C. § 1381-1387.

4. The department shall report to the general assembly annually on the progress of the on-site wastewater systems assistance program.

2001 Acts, ch 37, §2, 4; 2001 Acts, ch 176, §69, 70
NEW section

466.9 On-site wastewater systems assistance fund.

1. An on-site wastewater systems assistance fund is established as a separate fund in the state treasury under the control of the department.

2001 Acts, ch 37, §3, 4
NEW section

Moneys in the fund are appropriated to the department for the exclusive purpose of supporting and administering the on-site wastewater systems assistance program as established in section 466.8.

2. The fund shall consist of all of the following:

a. Moneys appropriated to the department by the general assembly for deposit in the fund or to carry out the purposes of the on-site wastewater systems assistance program.

b. Moneys provided to the department by the federal government to carry out the purpose of administering the programs, policies, and undertakings authorized in the federal Clean Water Act, 33 U.S.C. § 1381-1387.

c. Moneys collected by the department pursuant to loan agreements from homeowners receiving loans under the on-site wastewater systems assistance program.

d. Any other moneys obtained or accepted by the department for deposit in the fund.

3. a. The fund shall consist of the following accounts:

(1) The financing account which shall be used for the exclusive purpose of providing financing to homeowners residing outside the boundaries of a city with improving on-site wastewater systems under the on-site wastewater systems assistance program.

(2) The administration account which shall be used by the department to defray expenses associated with carrying out the on-site wastewater systems assistance program.

b. Of all moneys deposited into the fund each year, the department shall credit at least ninety-six percent of the moneys to the financing account and any remaining moneys to the administration account.

4. The moneys in the fund are not considered part of the general fund of the state, and in determining a general fund balance shall not be included in the general fund of the state. The moneys in the 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 fund shall be credited to the fund.

2001 Acts, ch 37, §3, 4
NEW section

CHAPTER 468

LEVEE AND DRAINAGE DISTRICTS AND IMPROVEMENTS

468.52 Levy for deficiency.

If the first assessment made by the board for the original cost or for repairs of any improvement is insufficient, the board shall make an additional assessment and levy in the same ratio as the first

for either purpose, but an assessment on any tract, parcel, or lot within the district which is computed at less than five dollars shall be fixed at the sum of five dollars. All assessments shall be levied at that time as a tax and, notwithstanding chapter

74A, shall bear interest at a rate determined by the board from that date, payable annually, except as provided as to cash payments within a specified time.

2001 Acts, ch 107, §1
Section amended

468.55 Assessments — maturity and collection.

If a landowner selects an option provided in section 468.57, all drainage or levee tax assessments become due and payable with the first half of ordinary taxes, and shall be collected in the same manner with the same interest for delinquency and the same manner of enforcing collection by tax sales. As an alternative, the certifying authority may request that the annual installment be payable in two equal payments, one-half with the September payment of ordinary taxes and one-half payable with the March payment of ordinary taxes. All drainage or levee tax assessments not optioned for installment payments by the landowner shall become due and payable within thirty days after the levy of assessments.

2001 Acts, ch 107, §2
Collection of taxes, chapter 445
Section amended

468.504 Election districts.

When a petition has been filed for the election of trustees to manage a district containing twenty

thousand acres or more, the board, or, if the district extends into more than one county, the boards of the counties by joint action, shall, before the election, divide the district into three election districts for the purpose of securing a proper distribution of trustees in the district, and the division shall be so made that each election district will have substantially equal voting power and acreage, as nearly as may be. After the division is made there shall be elected one trustee for each of the election districts, but at the election all the qualified voters for the entire district shall be entitled to vote for each trustee. The division here provided for shall be for the purposes only of a proper distribution of trustees in the district and shall not otherwise affect the district or its management and control.

2001 Acts, ch 89, §1
Section amended

468.514 Ballots — petition for printed ballots.

Candidates for drainage district trustee shall have their names placed on printed ballots provided a petition therefor is signed by ten qualified voters of the district and filed with the clerk of the board at least twenty-five days but not more than sixty-five days before the election. Space shall also be provided on the ballot for write-in votes.

2001 Acts, ch 56, §36
Section amended

CHAPTER 473

ENERGY DEVELOPMENT AND CONSERVATION

473.8 Emergency powers.

If the department by resolution determines the health, safety, or welfare of the people of this state is threatened by an actual or impending acute shortage of usable energy, it shall transmit the resolution to the governor together with its recommendation on the declaration of an emergency by the governor and recommended actions, if any, to be undertaken. Within thirty days of the date of the resolution, the governor may issue a proclamation of emergency which shall be filed with the secretary of state. The proclamation shall state the facts relied upon and the reasons for the proclamation.

Pursuant to the proclamation of an emergency or in response to a declaration of an energy emergency by the president of the United States under the federal Emergency Energy Conservation Act of 1979, Pub. L. No. 96-102, the governor by executive order may:

1. Regulate the operating hours of energy consuming instrumentalities of state government, political subdivisions, private institutions and business facilities to the extent the regulation is

not hazardous or detrimental to the health, safety, or welfare of the people of this state. However, the governor shall have no authority to suspend, amend or nullify any service being provided by a public utility pursuant to an order or rule of a federal agency which has jurisdiction over the public utility.

2. Establish a system for the distribution and supply of energy. The system shall not include a coupon rationing program, unless the program is federally mandated.

3. Curtail public and private transportation utilizing energy sources. Curtailment may include measures designed to promote the use of car pools and mass transit systems.

4. Delegate any administrative authority vested in the governor to the department or the director.

5. Provide for the temporary transfer of directors, personnel, or functions of state departments and agencies, for the purpose of performing or facilitating emergency measures pursuant to subsections 1 and 2.

6. Accept the delegation of other mandatory

measures as allowed by the federal Emergency Energy Conservation Act of 1979, Pub. L. No. 96-102.

If the general assembly is in session, it may revoke by concurrent resolution any proclamation of emergency issued by the governor. If the general assembly is not in session, the proclamation of emergency by the governor may be revoked by a majority vote of the standing membership of the legislative council. Such revocation shall be effective upon receipt of notice of the revocation by the secretary of state and any functions being performed pursuant to the governor's proclamation shall cease immediately.

A violation of an executive order of the governor issued pursuant to this section is a scheduled violation as provided in section 805.8C, subsection 1. If the violation is continuous and stationary in its nature and subsequent compliance can easily be ascertained, an officer may issue a memorandum of warning in lieu of a citation providing a reasonable amount of time not exceeding fourteen days to correct the violation and to comply with the requirements of the executive order.

2001 Acts, ch 137, §5

Internal reference change applied

473.20 Energy loan fund.

An energy loan fund is established in the office of the treasurer of state to be administered by the department.

1. The department may make loans to the state, state agencies, political subdivisions of the state, school districts, area education agencies, community colleges, and nonprofit organizations for implementation of energy conservation measures identified in a comprehensive engineering analysis. Loans shall be made for all cost-effective energy management improvements. For the state, state agencies, political subdivisions of the state, school districts, area education agencies, community colleges, and nonprofit organizations to receive a loan from the fund, the department shall require completion of an energy management plan including an energy audit and a comprehensive engineering analysis. The department shall approve loans made under this section.

2. Cities and counties shall repay the loans from moneys in their debt service funds. Area edu-

cation agencies shall repay the loans from any moneys available to them.

School districts and community colleges may enter into financing arrangements with the department or its duly authorized agents or representatives obligating the school district or community college to make payments on the loans beyond the current budget year of the school district or community college. Chapter 75 shall not be applicable. School districts shall repay the loans from moneys in either their general fund or debt service fund. Community colleges shall repay the loans from their general fund. Other entities receiving loans under this section shall repay the loans from any moneys available to them.

3. The department may accept gifts, federal funds, state appropriations, and other moneys for deposit in the energy loan fund or may fund the energy loan fund in accordance with section 473.20A.

4. For the purpose of this section, "loans" means loans, leases, or alternative financing arrangements.

5. The state, state agencies, political subdivisions of the state, school districts, area education agencies, and community colleges shall design and construct the most energy cost-effective facilities feasible and shall use the financing made available by the department to cover the incremental costs above minimum building code energy efficiency standards of purchasing energy efficient devices and materials unless other lower cost financing is available. As used in this section, "facility" means a structure that is heated or cooled by a mechanical or electrical system, or any system of physical operation that consumes energy to carry out a process.

6. The department shall not require the state, state agencies, political subdivisions of the state, school districts, area education agencies, and community colleges to implement a specific energy conservation measure identified in a comprehensive engineering analysis if the entity which prepared the analysis demonstrates to the department that the facility which is the subject of the energy conservation measure is unlikely to be used or operated for the full period of the expected payback of the energy conservation measure.

2001 Acts, ch 60, §1

Subsection 1 amended

CHAPTER 476

PUBLIC UTILITY REGULATION

476.1A Applicability of authority — certain electric utilities.

Electric public utilities having fewer than ten thousand customers and electric cooperative corporations and associations are not subject to the rate regulation authority of the board. Such utili-

ties are subject to all other regulation and enforcement activities of the board, including:

1. Assessment of fees for the support of the division.
2. Safety and engineering standards for equipment, operations, and procedures.

3. Assigned area of service.
4. Pilot projects of the board.
5. Assessment of fees for the support of the Iowa energy center created in section 266.39C and the center for global and regional environmental research established by the state board of regents.
6. Filing alternate energy purchase program plans with the board, and offering such programs to customers, pursuant to section 476.47.
7. Filing energy efficiency plans and energy efficiency results with the board. The energy efficiency plans as a whole shall be cost-effective. The board may permit these utilities to file joint plans.

The board may waive all or part of the energy efficiency filing and review requirements for electric cooperative corporations and associations and electric public utilities which demonstrate superior results with existing energy efficiency efforts.

However, sections 476.20, 476.21, 476.41 through 476.44, 476.51, 476.56, 476.62, and 476.66 and chapters 476A and 478, to the extent applicable, apply to such electric utilities.

Electric cooperative corporations and associations and electric public utilities exempt from rate regulation under this section shall not make or grant any unreasonable preferences or advantages as to rates or services to any person or subject any person to any unreasonable prejudice or disadvantage.

The board of directors or the membership of an electric cooperative corporation or association otherwise exempt from rate regulation may elect to have the cooperative's rates regulated by the board. The board shall adopt rules prescribing the manner in which the board of directors or the membership of an electric cooperative may so elect. If the board of directors or the membership of an electric cooperative has elected to have the cooperative's rates regulated by the board, after two years have elapsed from the effective date of such election the membership of the electric cooperative may elect to exempt the cooperative from the rate regulation authority of the board.

2001 Acts, 1st Ex, ch 4, §8, 36

NEW subsection 6 and former subsection 6 renumbered as 7

476.1B Applicability of authority — municipally owned utilities.

1. Unless otherwise specifically provided by statute, a municipally owned utility furnishing gas or electricity is not subject to regulation by the board under this chapter, except for regulatory action pertaining to:

- a. Assessment of fees for the support of the division and the office of consumer advocate, as set forth in section 476.10.
- b. Safety standards.
- c. Assigned areas of service, as set forth in sections 476.22 through 476.26.
- d. Enforcement of civil penalties pursuant to section 476.51.
- e. Disconnection of service, as set forth in sec-

tion 476.20.

f. Discrimination against users of renewable energy resources, as set forth in section 476.21.

g. Encouragement of alternate energy production facilities, as set forth in sections 476.41 through 476.45.

h. Enforcement of section 476.56.

i. Enforcement of section 476.66.

j. Enforcement of section 476.62.

k. Assessment of fees for the support of the Iowa energy center created in section 266.39C and the center for global and regional environmental research created by the state board of regents.

l. Filing energy efficiency plans and energy efficiency results with the board. The energy efficiency plans as a whole shall be cost-effective. The board may permit these utilities to file joint plans.

m. An electric power agency as defined in chapters 28F and 476A that includes as a member a city or municipally owned utility that builds transmission facilities after July 1, 2001, is subject to applicable transmission reliability rules or standards adopted by the board for those facilities.

n. Filing alternate energy purchase program plans with the board, and offering such programs to customers, pursuant to section 476.47.

2. The board may waive all or part of the energy efficiency filing and review requirements for municipally owned utilities which demonstrate superior results with existing energy efficiency efforts.

3. Unless otherwise specifically provided by statute, a municipally owned utility providing local exchange services is not subject to regulation by the board under this chapter except for regulatory action pertaining to the enforcement of sections 476.11, 476.29, 476.95, 476.96, 476.100, 476.101, and 476.102.

2001 Acts, 1st Ex, ch 4, §9, 36

Subsection 1, NEW paragraphs m and n

476.6 Changes in rates, charges, schedules and regulations — supply and cost review — water costs for fire protection.

1. *Filing with board.* A public utility subject to rate regulation shall not make effective a new or changed rate, charge, schedule or regulation until the rate, charge, schedule, or regulation has been approved by the board, except as provided in subsections 11 and 13.

A subscriber of a telephone exchange or service, who is declared to be legally blind under section 422.12, subsection 1, paragraph "e", is exempt from any charges for telephone directory assistance that may be approved by the board.

2. *Telephone directory assistance charges — record provided.* The board shall not approve a schedule of directory assistance charges unless the schedule provides that residential customers be provided a record of the date and time of each directory assistance call made from their residence.

3. *Telephone directory assistance charges — approval by board.* Notwithstanding contrary provisions of this section, a public utility shall not implement a charge for telephone directory assistance or implement a new or changed rate for telephone directory assistance except pursuant to a tariff that has been filed with the board and finally approved by the board.

4. *First seven calls exempted.* A telephone directory assistance tariff that is approved by the board on or after July 1, 1981, shall be subject to the limitation that a subscriber shall not be charged for the first seven directory assistance calls made from the subscriber's station during each of the first twelve months in which the tariff is in effect, and a charge made in violation of this limitation is an unlawful charge within the meaning of this chapter.

5. *Written notice of increase.* All public utilities, except those exempted from rate regulation by section 476.1, shall give written notice of a proposed increase of any rate or charge to all affected customers served by the public utility no more than sixty-two days prior to and prior to the time the application for the increase is filed with the board. Public utilities exempted from rate regulation by section 476.1 shall give written notice of a proposed increase of any rate or charge to all affected customers served by the public utility at least thirty days prior to the effective date of the increase. If the public utility is subject to rate regulation, the notice to affected customers shall also state that the customer has a right to file a written objection to the rate increase and that the affected customers may request the board to hold a public hearing to determine if the rate increase should be allowed. The board shall prescribe the manner and method that the written notice to each affected customer of the public utility shall be served.

6. *Facts and arguments submitted.* At the time a public utility subject to rate regulation files with the board an application for any new or changed rates, charges, schedules, or regulations, the public utility also shall submit factual evidence and written argument offered in support of the filing. If the filing is an application for a general rate increase, the utility shall also file affidavits containing testimonial evidence to be offered in support of the filing, although this requirement does not apply if the public utility is a rural electric cooperative.

7. *Hearing set.* After the filing of an application for new or changed rates, charges, schedules, or regulations by a public utility subject to rate regulation, the board, prior to the expiration of thirty days after the filing date, shall docket the case as a formal proceeding and set the case for hearing unless the new or changed rates, charges, schedules, or regulations are approved by the board. However, if an application presents no material issue of fact subject to dispute, and the board

determines that the application violates a relevant statute, or is not in substantial compliance with a board rule lawfully adopted pursuant to chapter 17A, the application may be rejected by the board without prejudice and without a hearing, provided that the board issues a written order setting forth all of its reasons for rejecting the application. In the case of a gas public utility having less than two thousand customers, the board shall docket a case as a formal proceeding and set the case for hearing as provided in section 476.1C. In the case of a rural electric cooperative, the board may docket the case as a formal proceeding and set the case for hearing prior to the proposed effective date of the tariff. The board shall give notice of formal proceedings as it deems appropriate. The docketing of a case as a formal proceeding suspends the effective date of the new or changed rates, charges, schedules, or regulations until the rates, charges, schedules, or regulations are approved by the board, except as provided in subsection 13.

8. *Utility hearing expenses reported.* When a case has been docketed as a formal proceeding under subsection 7, the public utility, within a reasonable time thereafter, shall file with the board a report outlining the utility's expected expenses for litigating the case through the time period allowed by the board in rendering a decision. At the conclusion of the utility's presentation of comments, testimony, exhibits, or briefs the utility shall submit to the board a listing of the utility's actual litigation expenses in the proceeding. As part of the findings of the board under subsection 9, the board shall allow recovery of costs of the litigation expenses over a reasonable period of time to the extent the board deems the expenses reasonable and just.

9. *Finding by board.* If, after hearing and decision on all issues presented for determination in the rate proceeding, the board finds the proposed rates, charges, schedules, or regulations of the utility to be unlawful, the board shall by order authorize and direct the utility to file new or changed rates, charges, schedules, or regulations which, when approved by the board and placed in effect, will satisfy the requirements of this chapter. The rates, charges, schedules, or regulations so approved are lawful and effective upon their approval.

10. *Limitation on filings.* A public utility shall not make a subsequent filing of an application for a new or changed rate, charge, schedule, or regulation which relates to services for which a rate filing is pending within twelve months following the date the prior application was filed or until the board has issued a final order on the prior application, whichever date is earlier, unless the public utility applies to the board for authority and receives authority to make a subsequent filing at an earlier date.

11. *Automatic adjustments permitted.* This

chapter does not prohibit a public utility from making provision for the automatic adjustment of rates and charges for public utility service provided that a schedule showing the automatic adjustment of rates and charges is first filed with the board.

12. *Rate levels for telephone utilities.* The board may approve a schedule of rate levels for any regulated service provided by a utility providing communication services.

13. *Temporary authority.* Upon the request of a public utility, the board shall, when required by this subsection, grant the public utility temporary authority to place in effect any or all of the suspended rates, charges, schedules or regulations by filing with the board a bond or other undertaking approved by the board conditioned upon the refund in a manner to be prescribed by the board of any amounts collected in excess of the amounts which would have been collected under rates, charges, schedules or regulations finally approved by the board. In determining that portion of the new or changed rates, charges, schedules or regulations to be placed in effect prior to a final decision, the board shall apply previously established regulatory principles and shall, at a minimum, permit rates and charges which will allow the utility the opportunity to earn a return on common stock equity equal to that which the board held reasonable and just in the most recent rate case involving the same utility or the same type of utility service, provided that if the most recent final decision of the board in an applicable rate case was rendered more than twelve months prior to the date of filing of the request for temporary rates, the board shall in addition consider financial market data that is filed or that is otherwise available to the board and shall adjust the rate of return on common stock equity that was approved in that decision upward or downward as necessary to reflect current conditions. The board shall render a decision on a request for temporary authority within ninety days after the date of filing of the request. The decision shall be effective immediately. If the board has not rendered a final decision with respect to suspended rates, charges, schedules or regulations upon the expiration of ten months after the filing date, plus the length of any delay that necessarily results either from the failure of the public utility to exercise due diligence in connection with the proceedings or from intervening judicial proceedings, plus the length of any extension permitted by section 476.33, subsection 3, then those portions that were approved by the board on a temporary basis shall be deemed finally approved by the board and the utility may place them into effect on a permanent basis, and the utility also may place into effect subject to refund and until the final decision of the board any portion of the suspended rates, charges, schedules or regulations not previously approved on a temporary basis by filing with the board a bond or other

undertaking approved by the board.

If the board finds that an extension of the ten-month period is necessary to permit the accumulation of necessary data with respect to the operation of a newly constructed electric generating facility that has a capacity of one hundred megawatts or more of electricity and that is proposed to be included in the rate base for the first time, the board may extend the ten-month period up to a maximum extension of six months, but only with respect to that portion of the suspended rates, charges, schedules or regulations that are necessarily connected with the inclusion of the generating facility in the rate base. If a utility is proposing to include in its rate base for the first time a newly constructed electric generating facility that has a capacity of one hundred megawatts or more of electricity, the filing date of new or changed rates, charges, schedules or regulations shall, for purposes of computing the ninety-day and ten-month limitations stated above, be the date as determined by the board that the new plant went into service, but only with respect to that portion of the suspended rates, charges, schedules or regulations that are necessarily connected with the inclusion of the generating facility in the rate base.

The board shall determine the rate of interest to be paid by a public utility to persons receiving refunds. The interest rate to be applied to refunds of moneys collected subject to refund under this subsection is two percent per annum plus the average quarterly interest rate at commercial banks for twenty-four-month loans for personal expenditures, as determined by the board, compounded annually. The board shall consider federal reserve statistical release G.19 or its equivalent when determining interest to be paid under this subsection.

14. *Refunds passed on to customers.* If pursuant to federal law or rule a rate-regulated public utility furnishing gas to customers in the state receives a refund or credit for past gas purchases, the savings shall be passed on to the customers in a manner approved by the board. Similarly, if pursuant to federal law or rule a rate-regulated public utility furnishing gas to customers in the state receives a rate for future gas purchases which is lower than the price included in the public utility's approved rate application, the savings shall be passed on to the customers in a manner approved by the board.

15. *Natural gas supply and cost review.* The board shall periodically conduct a proceeding for the purpose of evaluating the reasonableness and prudence of a rate-regulated public utility's natural gas procurement and contracting practices. The natural gas supply and cost review shall be conducted as a contested case pursuant to chapter 17A.

Under procedures established by the board, each rate-regulated public utility furnishing gas shall periodically file a complete natural gas pro-

curement plan describing the expected sources and volumes of its gas supply and changes in the cost of gas anticipated over a future twelve-month period specified by the board. The utilities shall file information as the board deems appropriate.

During the natural gas supply and cost review, the board shall evaluate the reasonableness and prudence of the gas procurement plan. If a utility is not taking all reasonable actions to minimize its purchase gas costs, consistent with assuring an adequate long-term supply of natural gas, the board shall not allow the utility to recover from its customers purchase gas costs in excess of those costs that would be incurred under reasonable and prudent policies and practices.

16. *Electric energy supply and cost review.* The board shall periodically conduct a proceeding for the purpose of evaluating the reasonableness and prudence of a rate-regulated public utility's procurement and contracting practices related to the acquisition of fuel for use in generating electricity. The evaluation may review the reasonableness and prudence of actions taken by a rate-regulated public utility to comply with the federal Clean Air Act Amendments of 1990, Pub. L. No. 101-549. The proceeding shall be conducted as a contested case pursuant to chapter 17A. Under procedures established by the board, the utility shall file information as the board deems appropriate. If a utility is not taking all reasonable actions to minimize its fuel and allowance transaction costs, the board shall not allow the utility to recover from its customers fuel and allowance transaction costs in excess of those costs that would be or would have been incurred under reasonable and prudent policies and practices.

17. *Energy efficiency plans.* Electric and gas public utilities shall offer energy efficiency programs to their customers through energy efficiency plans. An energy efficiency plan as a whole shall be cost-effective. In determining the cost-effectiveness of an energy efficiency plan, the board shall apply the societal test, utility cost test, rate-payer impact test, and participant test. Energy efficiency programs for qualified low-income persons and for tree planting programs need not be cost-effective and shall not be considered in determining cost-effectiveness of plans as a whole. The energy efficiency programs in the plans may be provided by the utility or by a contractor or agent of the utility.

18. *Water costs for fire protection in certain cities.*

a. Application. A city furnished water by a public utility subject to rate regulation may apply to the board for inclusion of all or a part of the costs of fire hydrants or other improvements, maintenance, and operations for the purpose of providing adequate water production, storage, and distribution for public fire protection in the rates or charges assessed to consumers covered by the applicant's fire protection service. The application

shall be made in a form and manner approved by or as directed by the board. The applicant shall provide such additional information as the board may require to consider the application.

b. Review. The board shall review the application, and may in its discretion consider additional evidence, beyond that supplied in the application or provided by the applicant in response to a request for additional information pursuant to paragraph "a", including, but not limited to, soliciting oral or written testimony from other interested parties.

c. Notice. Written notice of a proposed rate increase shall be provided by the public utility pursuant to subsection 5, except that notice shall be provided within ninety days of the date of application. Costs of the notice shall be paid for by the applicant.

d. Conditions for approval. As a condition to approving an application to include water-related fire protection costs in the utility's rates or charges, the board shall make an affirmative determination that the following conditions will be met:

(1) That the service area currently charged for fire protection, either directly or indirectly, is substantially the same service area containing those persons who will pay for water-related fire protection through inclusion of such costs within the utility's rates or charges.

(2) That the inclusion of such costs within the utility's rates or charges will not cause substantial inequities among the utility's customers.

(3) That all or a portion of the costs sought to be included in the utility's rates or charges by the applicant are reasonable in the circumstances, and limited to the purposes specified in paragraph "a".

(4) That written notice has been provided pursuant to paragraph "c" and that the costs of the notice have been paid by the applicant.

e. Inclusion within rates or charges. If the board affirmatively determines that the conditions of paragraph "d" are or will be satisfied, the board shall include the reasonable costs in the rates or charges assessed to consumers covered by the applicant's fire protection service.

f. Written order. The board shall issue a written order within six months of the date of application. The written order shall include a recitation of the facts found pursuant to consideration of the application.

19. *Energy efficiency implementation, cost review, and cost recovery.*

a. Gas and electric utilities required to be rate-regulated under this chapter shall file energy efficiency plans with the board. An energy efficiency plan and budget shall include a range of programs, tailored to the needs of all customer classes, including residential, commercial, and industrial customers, for energy efficiency opportunities. The plans shall include programs for qualified

low-income persons including a cooperative program with any community action agency within the utility's service area to implement countywide or communitywide energy efficiency programs for qualified low-income persons. Rate-regulated gas and electric utilities shall utilize Iowa agencies and Iowa contractors to the maximum extent cost-effective in their energy efficiency plans filed with the board.

b. A gas and electric utility required to be rate-regulated under this chapter shall assess potential energy and capacity savings available from actual and projected customer usage by applying commercially available technology and improved operating practices to energy-using equipment and buildings. The utility shall submit the assessment to the board. Upon receipt of the assessment, the board shall consult with the energy bureau of the division of energy and geological resources of the department of natural resources to develop specific capacity and energy savings performance standards for each utility. The utility shall submit an energy efficiency plan which shall include economically achievable programs designed to attain these energy and capacity performance standards.

c. The board shall conduct contested case proceedings for review of energy efficiency plans and budgets filed by gas and electric utilities required to be rate-regulated under this chapter. The board may approve, reject, or modify the plans and budgets. Notwithstanding the provisions of section 17A.19, subsection 5, in an application for judicial review of the board's decision concerning a utility's energy efficiency plan or budget, the reviewing court shall not order a stay. Whenever a request to modify an approved plan or budget is filed subsequently by the office of consumer advocate or a gas or electric utility required to be rate-regulated under this chapter, the board shall promptly initiate a formal proceeding if the board determines that any reasonable ground exists for investigating the request. The formal proceeding may be initiated at any time by the board on its own motion. Implementation of board-approved plans or budgets shall be considered continuous in nature and shall be subject to investigation at any time by the board or the office of the consumer advocate.

d. Notice to customers of a contested case proceeding for review of energy efficiency plans and budgets shall be in a manner prescribed by the board.

e. A gas or electric utility required to be rate-regulated under this chapter may recover, through an automatic adjustment mechanism filed pursuant to subsection 11, over a period not to exceed the term of the plan, the costs of an energy efficiency plan approved by the board, including amounts for a plan approved prior to July 1, 1996, in a contested case proceeding conducted pursuant to paragraph "c". The board shall periodically conduct a contested case proceeding to evalu-

ate the reasonableness and prudence of the utility's implementation of an approved energy efficiency plan and budget. If a utility is not taking all reasonable actions to cost-effectively implement an approved energy efficiency plan, the board shall not allow the utility to recover from customers costs in excess of those costs that would be incurred under reasonable and prudent implementation and shall not allow the utility to recover future costs at a level other than what the board determines to be reasonable and prudent. If the result of a contested case proceeding is a judgment against a utility, that utility's future level of cost recovery shall be reduced by the amount by which the programs were found to be imprudently conducted. The utility shall not represent energy efficiency in customer billings as a separate cost or expense unless the board otherwise approves.

f. A rate-regulated utility required to submit an energy efficiency plan under this subsection shall, upon the request of a state agency or political subdivision to which it provides service, provide advice and assistance regarding measures which the state agency or political subdivision might take in achieving improved energy efficiency results. The cooperation shall include assistance in accessing financial assistance for energy efficiency measures.

20. *Filing of forecasts.* The board shall periodically require each rate-regulated gas or electric public utility to file a forecast of future gas requirements or electric generating needs and the board shall evaluate the forecast. The forecast shall include, but is not limited to, a forecast of the requirements of its customers, its anticipated sources of supply, and its anticipated means of addressing the forecasted gas requirements or electric generating needs.

21. *Energy efficiency program financing.* The board may require each rate-regulated gas or electric public utility to offer qualified customers the opportunity to enter into an agreement for the amount of moneys reasonably necessary to finance cost-effective energy efficiency improvements to the qualified customers' residential dwellings or businesses.

22. *Allocation of replacement tax costs.* The costs of the replacement tax imposed pursuant to chapter 437A shall be reflected in the charges of utilities subject to rate regulation, in lieu of the utilities' costs of property taxes. The imposition of the replacement taxes pursuant to chapter 437A is not intended to initiate any change in the rates and charges for the sale of electricity, the sale of natural gas, or the transportation of natural gas that is subject to regulation by the board and in effect on January 1, 1999.

The cost of the replacement taxes imposed by chapter 437A shall be allocated among and within customer classes in a manner that will replicate the tax cost burden of the current property tax on individual customers to the maximum extent

practicable.

Upon the restructuring of the electric industry in this state so that individual consumers are given the right to choose their electric suppliers, replacement tax costs shall be assigned to the service corresponding to the individual generation, transmission, and delivery taxes. In all other respects, the allocation of the replacement tax costs among and within the customer classes shall remain the same to the maximum extent practicable.

Notwithstanding this subsection, the board may determine the amount of replacement tax properly included in retail rates subject to its jurisdiction. The board may determine whether the base rates or some other form of rate is most appropriate for recovery of the costs of the replacement tax, subject to the requirement that utility rates be reasonable and just. The board may also determine the appropriate allocation of the tax. Any significant modification to rate design relating to the replacement tax shall be made in a manner consistent with this subsection unless made in a contested case proceeding where the impact of such modification on competition and consumer costs is considered.

23. *Replacement tax study committee.* On or before July 1, 2000, the utilities board, in consultation with the department of revenue and finance, shall initiate and coordinate the establishment of a replacement tax study committee and provide staffing assistance to the committee. It is the intent of the general assembly that the committee include representatives of the utilities board, department of revenue and finance, department of management, investor-owned utilities, municipal utilities, cooperative utilities, local governments, major customer classes, and other stakeholders.

The committee shall study the effects of the replacement tax on both restructuring and the development of competition in the gas and electric industries in this state. The board shall report to the general assembly by January 1 of each year through 2003, the results of the study, and the committee's recommendations as to whether the replacement tax, in its then present form, should be continued, whether a different form of taxation of electric and gas utilities should be adopted in order to allow free and fair competition in the electric and gas industries, and fair competitive prices for all classes of consumers, whether a different basis for determination of the generation, transmission, and delivery taxes should be adopted or whether the relative share of the total replacement tax burden imposed on each of the generation, transmission, and delivery functions should be modified in order to allow free and fair competition in the electric and gas industries, and fair competitive prices for all classes of consumers, and whether the replacement tax in its then present form, appropriately accounts for the decline in value of electric power generating plants. The

replacement tax study committee shall reconvene by January 1, 2006, to further study these same issues, and the board shall report the results of the study and the committee's recommendations to the general assembly by January 1, 2008.

Upon recommendation of the committee, the board may contract for services necessary to the implementation of this subsection with persons who are not state employees, including, but not limited to, facilitators, consultants, and other experts required to assist the committee. The cost of contracted services shall not be paid from appropriated funds, but shall be assessed to entities paying replacement tax pursuant to chapter 437A, subchapter II, pro rata, based on the amount of tax paid.

24. *Recovery of management costs.* A public utility which is assessed management costs by a local government pursuant to chapter 480A is entitled to recover those costs. If the public utility serves customers within the boundaries of the local government imposing the management costs, such costs shall be recovered exclusively from those customers.

25. *Electric power generating facility emissions.*

a. It is the intent of the general assembly that the state, through a collaborative effort involving state agencies and affected generation owners, provide for compatible statewide environmental and electric energy policies with respect to regulated emissions from rate-regulated electric power generating facilities in the state that are fueled by coal. Each rate-regulated public utility that is an owner of one or more electric power generating facilities fueled by coal and located in this state on July 1, 2001, shall develop a multiyear plan and budget for managing regulated emissions from its facilities in a cost-effective manner.

(1) The initial multiyear plan and budget shall be filed with the board by April 1, 2002. Updates to the plan and budget shall be filed at least every twenty-four months.

(2) Copies of the initial plan and budget, as well as any subsequent updates, shall be served on the environmental protection division of the department of natural resources.

(3) The initial multiyear plan and budget and any subsequent updates shall be considered in a contested case proceeding pursuant to chapter 17A. The environmental protection division of the department of natural resources and the consumer advocate shall participate as parties to the proceeding.

(4) The department of natural resources shall state whether the plan or update meets applicable state environmental requirements for regulated emissions. If the plan does not meet these requirements, the department shall recommend amendments that outline actions necessary to bring the plan or update into compliance with the environmental requirements.

b. The board shall not approve a plan or update that does not meet applicable state environmental requirements and federal ambient air quality standards for regulated emissions from electric power generating facilities located in the state.

c. The board shall review the plan or update and the associated budget, and shall approve the plan or update and the associated budget if the plan or update and the associated budget are reasonably expected to achieve cost-effective compliance with applicable state environmental requirements and federal ambient air quality standards. In reaching its decision, the board shall consider whether the plan or update and the associated budget reasonably balance costs, environmental requirements, economic development potential, and the reliability of the electric generation and transmission system.

d. The board shall issue an order approving or rejecting a plan, update, or budget within one hundred eighty days after the public utility's filing is deemed complete; however, upon good cause shown, the board may extend the time for issuing the order as follows:

(1) The board may grant an extension of thirty days.

(2) The board may grant more than one extension, but each extension must rely upon a separate showing of good cause.

(3) A subsequent extension must not be granted any earlier than five days prior to the expiration of the original one-hundred-eighty-day period, or the current extension.

e. The reasonable costs incurred by a rate-regulated public utility in preparing and filing the plan, update, or budget and in participating in the proceedings before the board and the reasonable costs associated with implementing the plan, update, or budget shall be included in its regulated retail rates.

f. It is the intent of the general assembly that the board, in an environmental plan, update, or associated budget filed under this section by a rate-regulated public utility, may limit investments or expenditures that are proposed to be undertaken prior to the time that the environmental benefit to be produced by the investment or expenditure would be required by state or federal law.

g. The board shall report to the general assembly by January 21, 2003, on the appropriateness and desirability of requiring the municipal utilities and the rural electric cooperatives to file multi-year plans and budgets for managing regulated emissions from their electric power generating facilities fueled by coal and located in this state, similar to the process required for rate-regulated public utilities under this subsection.

2001 Acts, 1st Ex, ch 4, §10, 36
NEW subsection 25

476.10 Investigations — expense — appropriation.

In order to carry out the duties imposed upon it by law, the board may, at its discretion, allocate and charge directly the expenses attributable to its duties to the person bringing a proceeding before the board or to persons participating in matters before the board. The board shall ascertain the certified expenses incurred and directly chargeable by the consumer advocate division of the department of justice in the performance of its duties. The board and the consumer advocate separately may decide not to charge expenses to persons who, without expanding the scope of the proceeding or matter, intervene in good faith in a board proceeding initiated by a person subject to the board's jurisdiction, the consumer advocate, or the board on its own motion. For assessments in any proceedings or matters before the board, the board and the consumer advocate separately may consider the financial resources of the person, the impact of assessment on participation by intervenors, the nature of the proceeding or matter, and the contribution of a person's participation to the public interest. The board may present a bill for expenses under this paragraph to the person, either at the conclusion of a proceeding or matter, or from time to time during its progress. Presentation of a bill for expenses under this paragraph constitutes notice of direct assessment and request for payment in accordance with this section.

The board shall ascertain the total of the division's expenses incurred during each fiscal year in the performance of its duties under law. The board shall add to the total of the division's expenses the certified expenses of the consumer advocate as provided under section 475A.6. The board shall deduct all amounts charged directly to any person from the total expenses of the board and the consumer advocate. The board may assess the amount remaining after the deduction to all persons providing service over which the board has jurisdiction in proportion to the respective gross operating revenues of such persons from intrastate operations during the last calendar year over which the board has jurisdiction. For purposes of determining gross operating revenues under this section, the board shall not include gross receipts received by a cooperative corporation or association for wholesale transactions with members of the cooperative corporation or association, provided that the members are subject to assessment by the board based upon the members' gross operating revenues, or provided that such a member is an association whose members are subject to assessment by the board based upon the members' gross operating revenues. If any portion of the remainder can be identified with a specific type of utility service, the board shall assess those expenses only to the entities providing that type of

service over which the board has jurisdiction. The board may make the remainder assessments under this paragraph on a quarterly basis, based upon estimates of the expenditures for the fiscal year for the utilities division and the consumer advocate. 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 paragraph. For gas and electric public utilities exempted from rate regulation pursuant to this chapter, the remainder assessments under this paragraph shall be computed at one-half the rate used in computing the assessment for other persons.

A person subject to a charge or assessment shall pay the division the amount charged or assessed against the person within thirty days from the time the division provides notice to the person of the amount due, unless the person files an objection in writing with the board setting out the grounds upon which the person claims that such charge or assessment is excessive, unreasonable, erroneous, unlawful, or invalid. Upon receipt of an objection, the board shall set the matter for hearing and issue its order in accordance with its findings in the proceeding.

The 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 treasurer of state 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.

2001 Acts, ch 9, §1, 3
Utilities' board report to general assembly regarding assessments made pursuant to 2001 amendments; 2001 Acts, ch 9, §2, 3
Unnumbered paragraphs 1 and 2 amended
Unnumbered paragraph 3 amended and divided

CROSSINGS — RAILROAD RIGHTS-OF-WAY

476.27 Public utility crossing — railroad rights-of-way.

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

a. “*Board*” means the Iowa utilities board.

b. “*Crossing*” means the construction, operation, repair, or maintenance of a facility over, under, or across a railroad right-of-way by a public utility.

c. “*Direct expenses*” includes, but is not limited to, any or all of the following:

(1) The cost of inspecting and monitoring the crossing site.

(2) Administrative and engineering costs for review of specifications; for entering a crossing on the railroad’s books, maps, and property records; and other reasonable administrative and engineering costs incurred as a result of the crossing.

(3) Document and preparation fees associated with a crossing, and any engineering specifications related to the crossing.

(4) Damages assessed in connection with the rights granted to a public utility with respect to a crossing.

d. “*Facility*” means any cable, conduit, wire, pipe, casing pipe, supporting poles and guys, man-hole, or other material and equipment, that is used by a public utility to furnish any of the following:

- (1) Communications services.
- (2) Electricity.
- (3) Gas by piped system.
- (4) Sanitary and storm sewer service.
- (5) Water by piped system.

e. “*Public utility*” means a public utility as defined in section 476.1, except that, for purposes of this section, “*public utility*” also includes all mutual telephone companies, municipally owned facilities, unincorporated villages, waterworks, municipally owned waterworks, joint water utilities, rural water districts incorporated under chapter 357A or 504A, cooperative water associations, franchise cable television operators, and persons furnishing electricity to five or fewer persons.

f. “*Railroad*” or “*railroad corporation*” means a railroad corporation as defined in section 321.1, which is the owner, operator, occupant, manager,

or agent of a railroad right-of-way or the railroad corporation’s successor in interest. “*Railroad*” and “*railroad corporation*” include an interurban railway.

g. “*Railroad right-of-way*” means one or more of the following:

(1) A right-of-way or other interest in real estate that is owned or operated by a railroad corporation, the trustees of a railroad corporation, or the successor in interest of a railroad corporation.

(2) A right-of-way or other interest in real estate that is occupied or managed by or on behalf of a railroad corporation, the trustees of a railroad corporation, or the successor in interest of a railroad corporation, including an abandoned railroad right-of-way that has not otherwise reverted pursuant to chapter 327G.

(3) Another interest in a former railroad right-of-way that has been acquired or is operated by a land management company or similar entity.

h. “*Special circumstances*” means either or both of the following:

(1) The existence of characteristics of a segment of railroad right-of-way or of a proposed utility facility that increase the direct expenses associated with a proposed crossing.

(2) A proposed crossing that involves a significant and imminent likelihood of danger to the public health or safety, or that is a serious threat to the safe operations of the railroad, or to the current use of the railroad right-of-way, necessitating additional terms and conditions associated with the crossing.

2. *Rulemaking and standard crossing fee.* The board, in consultation with the state department of transportation, shall adopt rules pursuant to chapter 17A prescribing the terms and conditions for a crossing. The rules shall provide that any crossing be consistent with the public convenience and necessity and reasonable service to the public. The rules, at a minimum, shall address the following:

a. The terms and conditions applicable to a crossing including, but not limited to, the following:

(1) Notification required prior to the commencement of any crossing activity.

(2) A requirement that the railroad and the public utility each maintain and repair the person’s own property within the railroad right-of-way, and bear responsibility for each person’s own acts and omissions; except that the public utility shall be responsible for any bodily injury or property damage that typically would be covered under a standard railroad protective liability insurance policy.

(3) The amount and scope of insurance or self-insurance required to cover risks associated with a crossing.

(4) A procedure to address the payment of costs associated with the relocation of public util-

ity facilities within the railroad right-of-way necessary to accommodate railroad operations.

(5) Terms and conditions for securing the payment of any damages by the public utility before it proceeds with a crossing.

(6) Immediate access to a crossing for repair and maintenance of existing facilities in case of emergency.

(7) Engineering standards for utility facilities crossing railroad rights-of-way.

(8) Provision for expedited crossing, absent a claim of special circumstances, after payment by the public utility of the standard crossing fee, if applicable, and submission of completed engineering specifications to the railroad.

(9) Other terms and conditions necessary to provide for the safe and reasonable use of a railroad right-of-way by a public utility, and consistent with rules adopted by the board, including any complaint procedures adopted by the board to enforce the rules.

b. Unless otherwise agreed by the parties and subject to subsection 4, a public utility that locates its facilities within the railroad right-of-way for a crossing, other than a crossing along the public roads of the state pursuant to chapter 477, shall pay the railroad a one-time standard crossing fee of seven hundred fifty dollars for each crossing. The standard crossing fee shall be in lieu of any license or any other fees or charges to reimburse the railroad for the direct expenses incurred by the railroad as a result of the crossing. The public utility shall also reimburse the railroad for any actual flagging expenses associated with a crossing in addition to the standard crossing fee.

3. *Powers not limited. a.* Notwithstanding subsection 2, rules adopted by the board shall not prevent a railroad and a public utility from otherwise negotiating the terms and conditions applicable to a crossing or the resolution of any disputes relating to such crossing.

b. Notwithstanding paragraph “a”, neither this subsection nor this section shall impair the authority of a public utility to secure crossing rights by easement pursuant to the exercise of the power of eminent domain.

4. *Special circumstances. a.* A railroad or public utility that believes special circumstances exist for a particular crossing may petition the board for relief.

(1) If a petition for relief is filed, the board shall determine whether special circumstances exist that necessitate either a modification of the direct expenses to be paid, or the need for additional terms and conditions.

(2) The board may make any necessary findings of fact and determinations related to the existence of special circumstances, as well as any relief to be granted.

(3) A determination of the board, except for a determination on the issue of damages for the

rights granted to a public utility with respect to a crossing, shall be considered final agency action subject to judicial review under chapter 17A.

(4) The board shall assess the costs associated with a petition for relief equitably against the parties.

b. A railroad or public utility that claims to be aggrieved by a determination of the board on the issue of damages for the rights granted to a public utility with respect to a crossing may seek judicial review as provided in subsection 5.

5. *Appeals. a.* A railroad or public utility that claims to be aggrieved by the board’s determination of damages for rights granted to a public utility may appeal the board’s determination to the district court in the same manner as provided in section 6B.18 and sections 6B.21 through 6B.23. In any appeal of the determination of damages, the public utility shall be considered the applicant, and the railroad shall be considered the condemnee. References in sections 6B.18 and 6B.21 to “*compensation commission*” mean the board as defined in this section, or appointees of the board.

b. An appeal of any determination of the board other than the issues of damages for rights granted to a public utility shall be pursuant to chapter 17A.

6. *Authority to cross — emergency relief.* Pending board resolution of a claim of special circumstances raised in a petition, a public utility may, upon securing the payment of any damages, and upon submission of completed engineering specifications to the railroad, proceed with a crossing in accordance with the rules adopted by the board, unless the board, upon application for emergency relief, determines that there is a reasonable likelihood that either of the following conditions exist:

a. That the proposed crossing involves a significant and imminent likelihood of danger to the public health or safety.

b. That the proposed crossing is a serious threat to the safe operations of the railroad or to the current use of the railroad right-of-way.

If the board determines that there is a reasonable likelihood that the proposed crossing meets either condition, then the board shall immediately intervene to prevent the crossing until a factual determination is made.

7. *Conflicting provisions.* Notwithstanding any provision of the Code to the contrary, this section shall apply in all crossings of railroad rights-of-way involving a public utility as defined in this section, and shall govern in the event of any conflict with any other provision of law.

2001 Acts, ch 138, §1, 2
Applicability to crossings commenced prior to, on, or after July 1, 2001;
2001 Acts, ch 138, §2
NEW section

476.28 Reserved.

LOCAL TELEPHONE SERVICE

476.47 Alternate energy purchase programs.

1. Beginning January 1, 2004, an electric utility, whether or not rate-regulated under this chapter, shall offer an alternate energy purchase program to customers, based on energy produced by alternate energy production facilities in Iowa.

2. The board shall require electric utilities to file plans for alternate energy purchase programs offered pursuant to this section.

a. Rate-regulated electric utilities shall file plans for alternate energy purchase programs that allow customers to contribute voluntarily to the development of alternate energy in Iowa, and shall file tariffs as required by the board by rule.

b. Electric utilities that are not rate-regulated shall offer alternate energy purchase programs at rates determined by their governing authority, and shall file tariffs with the board for informational purposes only.

3. The electric utility shall notify consumers of its alternate energy purchase program and any proposed modifications to such program at least sixty days prior to implementation of the program or any modification.

4. For purposes of this section, an electric utility may base its program on energy produced by alternate energy production facilities located outside of Iowa under any of the following circumstances:

a. The energy is purchased by the electric utility pursuant to a contract in effect prior to July 1, 2001, and continues until the expiration of the contract, including any options to renew that are exercised by the electric utility.

b. The electric utility has a financial interest, as of July 1, 2001, in the alternate energy production facility that is located outside of Iowa, or in an entity that has a financial interest in an alternate energy production facility located outside of Iowa.

c. The energy is purchased by an electric utility that is not rate-regulated and that is required to purchase all of its electric power requirements from a single supplier that is physically located outside of Iowa.

5. This section shall not apply to non-rate-regulated electric utilities physically located outside of Iowa that serve Iowa customers.

6. Any consumer-owned utility may apply to the board for a waiver under this section, and the board, for good cause, may grant the waiver.

2001 Acts, 1st Ex, ch 4, §11, 36
NEW section

476.48 through 476.50 Reserved.

476.53 Electric generating and transmission facilities.

1. It is the intent of the general assembly to at-

tract the development of electric power generating and transmission facilities within the state in sufficient quantity to ensure reliable electric service to Iowa consumers and provide economic benefits to the state.

2. The general assembly's intent with regard to the development of electric power generating and transmission facilities, as provided in subsection 1, shall be implemented in a manner that is cost-effective and compatible with the environmental policies of the state, as expressed in Title XI.

3. *a.* If a rate-regulated public utility files an application pursuant to section 476A.3 to construct in Iowa a baseload electric power generating facility with a nameplate generating capacity equal to or greater than three hundred megawatts or a combined-cycle electric power generating facility, or an alternate energy production facility as defined in section 476.42, or if a rate-regulated public utility leases or owns in Iowa, in whole or in part, a new baseload electric power generating facility with a nameplate generating capacity equal to or greater than three hundred megawatts or a combined-cycle electric power generating facility, or a new alternate energy production facility as defined in section 476.42, the board shall specify in advance, by order issued after a contested case proceeding, the ratemaking principles that will apply when the costs of the facility are included in regulated electric rates.

b. In determining the applicable ratemaking principles, the board shall not be limited to traditional ratemaking principles or traditional cost recovery mechanisms.

c. In determining the applicable ratemaking principles, the board shall make the following findings:

(1) The rate-regulated public utility has in effect a board-approved energy efficiency plan as required under section 476.6, subsection 19.

(2) The rate-regulated public utility has demonstrated to the board that the public utility has considered other sources for long-term electric supply and that the facility or lease is reasonable when compared to other feasible alternative sources of supply. The rate-regulated public utility may satisfy the requirements of this subparagraph through a competitive bidding process, under rules adopted by the board, that demonstrate the facility or lease is a reasonable alternative to meet its electric supply needs.

d. The applicable ratemaking principles shall be determined in a contested case proceeding, which proceeding may be combined with the proceeding for issuance of a certificate conducted pursuant to chapter 476A.

e. The order setting forth the applicable ratemaking principles shall be issued prior to the commencement of construction or lease of the facility.

f. Following issuance of the order, the rate-

regulated public utility shall have the option of proceeding with construction or lease of the facility in Iowa, or withdrawing its application for a certificate under chapter 476A.

g. Notwithstanding any provision of this chapter to the contrary, the ratemaking principles es-

tablished by the order issued pursuant to paragraph "e" shall be binding with regard to the specific electric power generating facility in any subsequent rate proceeding.

2001 Acts, 1st Ex, ch 4, §12, 36
Section stricken and rewritten

CHAPTER 476A

ELECTRIC POWER GENERATION AND TRANSMISSION

SUBCHAPTER I

ELECTRIC POWER GENERATING FACILITIES

476A.1 Definitions.

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

1. "Agency" means an agency as defined in section 17A.2, subsection 1.

2. "Board" means the utilities board within the utilities division of the department of commerce.

3. "Certificate" means a certificate of public convenience, use and necessity issued pursuant to section 476A.6.

4. "Commence to construct" means significant alteration of a site to install permanent equipment or structures but does not include activities incident to preliminary engineering, environmental studies or acquisition of a site for a facility.

5. "Facility" means any electric power generating plant or a combination of plants at a single site, owned by any person, with a total capacity of twenty-five megawatts of electricity or more and those associated transmission lines connecting the generating plant to either a power transmission system or an interconnected primary transmission system or both. Transmission lines subject to the provisions of this subchapter shall not require a franchise under chapter 478.

6. "Regulatory agency" means an agency which issues licenses or permits required for the construction, operation or maintenance of a facility pursuant to statutes or rules in effect on the date on which an application for a certificate is accepted by the utilities board.

2001 Acts, 1st Ex, ch 4, §35, 36
Terminology change applied

476A.2 Certificate required.

1. Commencing January 1, 1977, a person shall not commence to construct a facility except as provided in section 476A.9 unless a certificate for the facility has been issued by the board. This subchapter shall not apply to persons who prior to July 1, 1976:

- a. Have acquired a site for a facility; and,
- b. Have publicly announced the intention to

construct a facility; and,

c. Have let contracts for major components of a facility.

2. Any significant alteration, as determined by the board, in the location, construction, maintenance, or operation of a facility whether constructed before or after July 1, 1976, shall require an application for an amendment to a certificate or a certificate, whichever is appropriate. "Significant alteration" shall include but shall not be limited to a change in the type of fuel used by the major electric generating facility.

3. Any person required to obtain a certificate or an amendment to a certificate shall construct, operate and maintain the facility according to the terms of the certificate and any amendments to the certificate. A certificate shall only be issued pursuant to this subchapter.

4. This subchapter shall not apply to an electric power generating plant, or combination of plants at a single site, with a total capacity of more than twenty-five but less than one hundred megawatts of electricity if the owner or operator prior to January 1, 1990, has met all of the following conditions:

- a. Acquired a site for the facility.
- b. Publicly announced the intention to construct a facility at that site.
- c. Let contracts for major components of the facility.

2001 Acts, 1st Ex, ch 4, §35, 36
Terminology change applied

476A.4 Hearing scheduled — notice.

1. The proceeding for the issuance of a certificate or an amendment to a certificate shall be treated in the same manner as a contested case pursuant to the provisions of chapter 17A. Upon acceptance of an application by the board, a public hearing shall be scheduled.

2. The board shall serve notice of the proceeding on the following:

- a. Interested agencies, as determined by the board, and regulatory agencies.
- b. County and city zoning authorities from the area in which the proposed site is located.
- c. Owners of record of real property located within one thousand linear feet of the proposed site.

3. Notice of the proceeding in the form provided in section 17A.12, subsection 2, shall be published in a newspaper of general circulation in each county in which the proposed site is located once a week for two consecutive weeks with the second publication being at least twenty days prior to the date of the hearing. The board shall be responsible for publication and delivery of notices required by this section.

4. The board shall conduct the hearing, as described in subsection 1, in the county in which the construction of the greater portion of the facility is being proposed.

5. A proceeding for the issuance of a certificate under section 476A.5 may be consolidated with a contested case proceeding for determination of applicable ratemaking principles under section 476.53.

2001 Acts, 1st Ex, ch 4, §13, 36
NEW subsection 5

476A.6 Decision — criteria.

The board shall render a decision on the application in an expeditious manner. A certificate shall be issued to the applicant if the board finds all of the following:

1. The services and operations resulting from the construction of the facility are consistent with legislative intent as expressed in section 476.53 and the economic development policy of the state as expressed in Title I, subtitle 5, and will not be detrimental to the provision of adequate and reliable electric service.

2. The applicant is willing to construct, maintain, and operate the facility pursuant to the provisions of the certificate and this subchapter.

3. The construction, maintenance, and operation of the facility will be consistent with reasonable land use and environmental policies and consonant with reasonable utilization of air, land, and water resources, considering available technology and the economics of available alternatives.

2001 Acts, 1st Ex, ch 4, §14, 35, 36
Section amended

476A.7 Issuance of certificate — effect.

1. Issuance of a certificate by the board:

a. Authorizes construction of the facility on the site designated in the certificate according to the terms and conditions stated in the certificate and licenses and permits issued by regulatory agencies during the proceeding; and,

b. Gives the applicant the power of eminent domain to the extent and under such conditions as the board may approve, prescribe and find necessary for the public convenience, use and necessity, proceeding in the manner of works of internal improvement under chapter 6B. The burden of proving the necessity for the exercise of the power of eminent domain shall be on the person issued the certificate.

2. A certificate may be transferred, subject to the approval of the board, to a person who agrees

to comply with the terms of the certificate including any amendments to the certificate. Certificates shall be transferable by operation of law to any receiver, trustee or similar assignee under a mortgage, deed of trust or similar instrument.

3. Pursuant to the provisions of section 476.53, a rate-regulated public utility shall have the option of withdrawing its application for issuance of a certificate at any time prior to the issuance of the certificate, or after the certificate has been issued.

2001 Acts, 1st Ex, ch 4, §15, 36
NEW subsection 3

476A.12 Rules.

The board shall adopt rules pursuant to chapter 17A necessary to implement the provisions of this subchapter including but not limited to the promulgation of facility siting criteria, the form for an application for a certificate and an amendment to a certificate, the description of information to be furnished by the applicant, the determination of what constitutes a significant alteration to a facility, and the establishment of minimum guidelines for public participation in the proceeding.

2001 Acts, 1st Ex, ch 4, §35, 36
Terminology change applied

476A.13 Staff assistance — federal preemption.

1. The board may request staff assistance from other federal, state and local agencies, pursuant to chapter 28D, to assist in discharging the responsibilities assigned to the board pursuant to this subchapter. The board may exercise the powers and responsibilities assigned to the board under this subchapter jointly with other governmental agencies pursuant to chapter 28E.

2. This subchapter shall not apply to any facility over which an agency of the federal government has exclusive jurisdiction. When concurrent jurisdiction exists with certain powers reserved to the state, the state shall exercise those powers with respect to facilities operating within this state to the full extent permitted by the Constitution and the laws of the United States.

2001 Acts, 1st Ex, ch 4, §35, 36
Terminology change applied

476A.14 Penalties.

1. Any person who commences to construct a facility as provided in this subchapter without having first obtained a certificate, or who constructs, operates or maintains any facility other than in compliance with a certificate issued by the board or a certificate amended pursuant to this subchapter, or who causes any of these acts to occur, shall be liable for a civil penalty of not more than ten thousand dollars for each violation or for each day of continuing violation. Civil penalties collected pursuant to this subsection shall be forwarded by the clerk of court to the treasurer of state for deposit in the general fund of the state.

2. The district court shall have exclusive juris-

diction to grant restraining orders and temporary or permanent injunctive relief as may be necessary to obtain compliance with this subchapter.

3. Persons convicted of violating any provision of this subchapter shall be guilty of a simple misdemeanor.

2001 Acts, 1st Ex, ch 4, §35, 36
Terminology change applied

476A.15 Waiver.

The board, if it determines that the public interest would not be adversely affected, may waive any of the requirements of this subchapter.

2001 Acts, 1st Ex, ch 4, §16, 35, 36
Section amended

476A.16 through 476A.19 Reserved.

SUBCHAPTER II

ELECTRIC POWER AGENCIES

476A.20 Definitions.

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

1. “*Electric power agency*” means an entity as defined in section 28F.2.

2. “*Facility*” means an electric power generating plant, or transmission line or system, as defined in section 476A.1.

3. “*Public bond or obligation*” means an obligation as defined in section 76.14.

2001 Acts, 1st Ex, ch 4, §17, 36
NEW section

476A.21 Electric power agency — general authority.

In addition to other powers conferred upon an electric power agency by chapter 28F or other applicable law, an electric power agency may enter into and carry out joint agreements with other participants for the acquisition of ownership of a joint facility and for the planning, financing, operation, and maintenance of the joint facility, as provided in this subchapter.

2001 Acts, 1st Ex, ch 4, §18, 36
NEW section

476A.22 Electric power agency — authority — conflicting provisions.

1. In addition to any powers conferred upon an electric power agency under chapter 28F or other applicable law, an electric power agency may exercise all other powers reasonably necessary or appropriate for or incidental to the effectuation of the electric power agency’s authorized purposes, including without limitation the powers enumerated in chapters 6A and 6B for purposes of constructing or acquiring an electric power facility.

2. An electric power agency, in connection with its property and affairs, and in connection with

property within its control, may exercise any and all powers that might be exercised by a natural person or a private corporation in connection with similar property and affairs.

3. The enumeration of specified powers and functions of an electric power agency in this subchapter is not a limitation of the powers of an electric power agency, but the procedures prescribed for exercising the powers and functions enumerated in this subchapter control and govern in the event of any conflict with any other provision of law.

4. The authority conferred pursuant to this subchapter applies to electric power agencies, notwithstanding any contrary provisions of section 28F.1.

2001 Acts, 1st Ex, ch 4, §19, 36
Eminent domain and eminent domain procedures; chapters 6A and 6B
NEW section

476A.23 Issuance of public bonds or obligations — purposes — limitations.

1. An electric power agency may from time to time issue its public bonds or obligations in such principal amounts as the electric power agency deems necessary to provide sufficient funds to carry out any of its purposes and powers, including but not limited to any of the following:

a. The acquisition or construction of any project to be owned or leased by the electric power agency, or the acquisition of any interest in such project or any right to the capacity of such project, including the acquisition, construction, or acquisition of any interest in an electric power generating plant to be constructed in this state, or the acquisition, construction, or acquisition of any interest in a transmission line or system.

b. The funding or refunding of the principal of, or interest or redemption premiums on, any public bonds or obligations issued by the electric power agency whether or not the public bonds or obligations or interest to be funded or refunded have become due.

c. The establishment or increase of reserves to secure or to pay the public bonds or obligations or interest on the public bonds or obligations.

d. The payment of all other costs or expenses of the electric power agency incident to and necessary to carry out its purposes and powers.

2. Notwithstanding anything in this subchapter or chapter 28F to the contrary, a facility shall not be financed with the proceeds of public bonds or obligations, the interest on which is exempt from federal income tax, unless the public issuer of such public bonds or obligations covenants that the issuer shall comply with the requirements or limitations imposed by the Internal Revenue Code or other applicable federal law to preserve the tax exemption of interest payable on the bonds or obligations.

3. Notwithstanding anything in this subchapter or chapter 28F to the contrary, an electric pow-

er generating facility shall not be financed under this subchapter unless all of the following conditions are satisfied:

a. The portion of the electric power generating facility financed by the electric power agency is not designed to serve the electric power requirements of retail customers of members that are municipal electric utilities established in the state after January 1, 2001.

b. The electric power agency annually files with the board, in a manner to be determined by the board, information regarding sales from the electric power generating facility in sufficient detail to determine compliance with these provisions.

The board shall report to the general assembly if any of the provisions are being violated.

2001 Acts, 1st Ex, ch 4, §20, 36
NEW section

476A.24 Public bonds or obligations authorized by resolution of board of directors — terms.

1. The board of directors of an electric power agency, by resolution, may authorize the issuance of public bonds or obligations of the electric power agency.

2. The public bonds or obligations may be issued in one or more series under the resolution or under a trust indenture or other security agreement.

3. The resolution, trust indenture, or other security agreement, with respect to such public bonds or obligations, shall provide for all of the following:

- a.* The date on the public bonds or obligations.
- b.* The time of maturity.
- c.* The rate of interest.
- d.* The denomination.
- e.* The form, either coupon or registered.
- f.* The conversion, registration, and exchange privileges.
- g.* The rank or priority.
- h.* The manner of execution.
- i.* The medium of payment, including the place of payment, either within or outside of the state.
- j.* The terms of redemption, either with or without premium.

k. Such other terms and conditions as set forth by the board in the resolution, trust indenture, or other security agreement.

4. Public bonds or obligations authorized by the board of directors shall not be subject to any restriction under other law with respect to the amount, maturity, interest rate, or other terms of obligation of a public agency or private person.

5. Chapter 75 shall not apply to public bonds or obligations authorized by the board of directors as provided in this section.

2001 Acts, 1st Ex, ch 4, §21, 36
NEW section

476A.25 Public bonds or obligations payable solely from agency revenues or funds.

1. The principal of and interest on any public bonds or obligations issued by an electric power agency shall be payable solely from the revenues or funds pledged or available for their payment as authorized in this subchapter.

2. Each public bond or obligation shall contain all of the following terms:

a. That the principal of or interest on such public bonds or obligations is payable solely from revenues or funds of the electric power agency.

b. That neither the state or a political subdivision of the state other than the electric power agency, nor a public agency that is a member of the electric power agency is obligated to pay the principal or interest on such public bonds or obligations.

c. That neither the full faith and credit nor the taxing power of the state, of any political subdivision of the state, or of any such public agency is pledged to the payment of the principal of or the interest on the public bonds or obligations.

2001 Acts, 1st Ex, ch 4, §22, 36
NEW section

476A.26 Public bonds or obligations — sources for payment — security.

1. Except as otherwise expressly provided by this subchapter or by the electric power agency, every issue of public bonds or obligations of the electric power agency shall be payable out of any revenues or funds of the electric power agency, subject only to any agreements with the holders of particular public bonds or obligations pledging any particular revenues or funds.

2. An electric power agency may issue types of public bonds or obligations as it may determine, including public bonds or obligations as to which the principal and interest are payable exclusively from the revenues from one or more projects, or from an interest in such project or projects, or a right to capacity of such project or projects, or from any revenue-producing contract made by the electric power agency with any person, or from its revenues generally.

3. Any public bonds or obligations may be additionally secured by a pledge of any grant, subsidy, or contribution from any public agency or other person, or a pledge of any income or revenues, funds, or moneys of the electric power agency from any other source.

2001 Acts, 1st Ex, ch 4, §23, 36
NEW section

476A.27 Public bonds or obligations and rates for debt service not subject to state approval.

Public bonds or obligations of an electric power agency may be issued under this subchapter, and rents, rates, and charges may be established in the same manner as provided in section 28F.5 and pledged for the security of public bonds or obliga-

tions and interest and redemption premiums on such public bonds or obligations, without obtaining the consent of any department, division, commission, board, bureau, or agency of the state and without any other proceeding or the happening of any other condition or occurrence, except as specifically required by this subchapter.

2001 Acts, 1st Ex, ch 4, §24, 36
NEW section

476A.28 Public bonds or obligations to be negotiable.

All public bonds or obligations of an electric power agency shall be negotiable within the meaning and for all of the purposes of the uniform commercial code, chapter 554, subject only to the registration requirement of section 76.10.

2001 Acts, 1st Ex, ch 4, §25, 36
NEW section

476A.29 Validity of public bonds or obligations at delivery — temporary bonds.

1. Any public bonds or obligations may be issued and delivered, notwithstanding that one or more of the officers executing them shall have ceased to hold office at the time when the public bonds or obligations are actually delivered.

2. Pending preparation of definitive bonds or obligations, an electric power agency may issue temporary bonds or obligations that shall be exchanged for the definitive bonds or obligations upon their issuance.

2001 Acts, 1st Ex, ch 4, §26, 36
NEW section

476A.30 Public or private sale of bonds and obligations.

Public bonds or obligations of an electric power agency may be sold at public or private sale for a price and in a manner determined by the electric power agency.

2001 Acts, 1st Ex, ch 4, §27, 36
NEW section

476A.31 Public bonds or obligations as suitable investments for governmental units, financial institutions, and fiduciaries.

The following persons may legally invest any debt service funds, money, or other funds belonging to such person or within such person's control in any public bonds or obligations issued pursuant to this subchapter:

1. A bank, trust company, savings association, building and loan association, savings and loan association, or investment company.

2. An insurance company, insurance association, or any other person carrying on an insurance business.

3. An executor, administrator, conservator, trustee, or other fiduciary.

4. Any other person authorized to invest in

bonds or obligations of the state.

2001 Acts, 1st Ex, ch 4, §28, 36
Investment of public funds; §12B.10
Insurance companies; §511.8, 515.35
Banks; §524.901
Savings and loan associations; §534.213
Investments by fiduciaries; §636.23
NEW section

476A.32 Resolution, trust indenture, or security agreement constitutes contract — provisions.

The resolution, trust indenture, or other security agreement under which any public bonds or obligations are issued shall constitute a contract with the holders of the public bonds or obligations, and may contain provisions, among others, prescribing any of the following terms:

1. The terms and provisions of the public bonds or obligations.

2. The mortgage or pledge of and the grant of a security interest in any real or personal property and all or any part of the revenue from any project or any revenue producing contract made by the electric power agency with any person to secure the payment of public bonds or obligations, subject to any agreements with the holders of public bonds or obligations which might then exist.

3. The custody, collection, securing, investment, and payment of any revenues, assets, money, funds, or property with respect to which the electric power agency may have any rights or interest.

4. The rates or charges for electric energy sold by, or services rendered by, the electric power agency, the amount to be raised by the rates or charges, and the use and disposition of any or all revenue.

5. The creation of reserves or debt service funds and the regulation and disposition of such reserves or funds.

6. The purposes to which the proceeds from the sale of any public bonds or obligations to be issued may be applied, and the pledge of the proceeds to secure the payment of the public bonds or obligations.

7. Limitations on the issuance of any additional public bonds or obligations, the terms upon which additional public bonds or obligations may be issued and secured, and the refunding of outstanding public bonds or obligations.

8. The rank or priority of any public bonds or obligations with respect to any lien or security.

9. The creation of special funds or moneys to be held for operating expenses, payment, or redemption of public bonds or obligations, reserves or other purposes, and the use and disposition of moneys held in these funds.

10. The procedure by which the terms of any contract with or for the benefit of the holders of public bonds or obligations may be amended or abrogated, the amount of public bonds or obligations the holders of which must consent to such

amendment or abrogation, and the manner in which consent may be given.

11. The definition of the acts or omissions to act that constitute a default in the duties of the electric power agency to holders of its public bonds or obligations, and the rights and remedies of the holders in the event of default including, if the electric power agency so determines, the right to accelerate the date of the maturation of the public bonds or obligations or the right to appoint a receiver or receivers of the property or revenues subject to the lien of the resolution, trust indenture, or other security agreement.

12. Any other or additional agreements with or for the benefit of the holders of public bonds or obligations or any covenants or restrictions necessary or desirable to safeguard the interests of the holders.

13. The custody of any of the electric power agency's property or investments, the safekeeping of such property or investments, the insurance to be carried on such property or investments, and the use and disposition of insurance proceeds.

14. The vesting in a trustee or trustees, within or outside the state, of such property, rights, powers, and duties as the electric power agency may determine; or the limiting or abrogating of the rights of the holders of any public bonds or obligations to appoint a trustee, or the limiting of the rights, powers, and duties of such trustee.

15. The appointment of and the establishment of the duties and obligations of any paying agent or other fiduciary within or outside the state.

2001 Acts, 1st Ex, ch 4, §29, 36
NEW section

476A.33 Mortgage or trust deed to secure bonds.

For the security of public bonds or obligations is-

sued or to be issued by an electric power agency, the electric power agency may mortgage or execute deeds of trust of the whole or any part of its property.

2001 Acts, 1st Ex, ch 4, §30, 36
NEW section

476A.34 No personal liability on public bonds or obligations.

An official, director, member of an electric power agency, or any person executing public bonds or obligations shall not be liable personally on the public bonds or obligations or be subject to any personal liability or accountability by reason of the issuance of such public bonds or obligations.

2001 Acts, 1st Ex, ch 4, §31, 36
NEW section

476A.35 Repurchase of securities.

An electric power agency may purchase public bonds or obligations out of any funds available for such purchase, and hold, pledge, cancel, or resell the public bonds or obligations, subject to and in accordance with any agreements with the holders.

2001 Acts, 1st Ex, ch 4, §32, 36
NEW section

476A.36 Pledge of revenue as security.

An electric power agency may pledge its rates, rents, and other revenues, or any part of such rates, rents, and revenues, as security for the repayment, with interest and redemption premiums, if any, of the moneys borrowed by the electric power agency or advanced to the electric power agency for any of its authorized purposes and as security for the payment of moneys due and owed by the electric power agency under any contract.

2001 Acts, 1st Ex, ch 4, §33, 36
NEW section

CHAPTER 478

ELECTRIC TRANSMISSION LINES

478.3 Petition — requirements.

1. All petitions shall set forth:
 - a. The name of the individual, company, or corporation asking for the franchise.
 - b. The principal office or place of business.
 - c. The starting points, routes, and termini of the proposed lines, accompanied with a map or plat showing such details.
 - d. A general description of the public or private lands, highways, and streams over, across, or along which any proposed line will pass.
 - e. General specifications as to materials and manner of construction.
 - f. The maximum voltage to be carried over each line.
 - g. Whether or not the exercise of the right of eminent domain will be used and, if so, a specific

reference to the lands described in paragraph "d" which are sought to be subject thereto.

h. An allegation that the proposed construction is necessary to serve a public use.

2. Petitions for transmission lines capable of operating at thirty-four and one-half kilovolts or more and extending a distance of not less than one mile across privately owned real estate shall also set forth an allegation that the proposed construction represents a reasonable relationship to an overall plan of transmitting electricity in the public interest and substantiation of such allegations, including but not limited to, a showing of the following:

a. The relationship of the proposed project to present and future economic development of the area.

- b. The relationship of the proposed project to comprehensive electric utility planning.
- c. The relationship of the proposed project to the needs of the public presently served and future projections based on population trends.
- d. The relationship of the proposed project to the existing electric utility system and parallel existing utility routes.
- e. The relationship of the proposed project to any other power system planned for the future.
- f. The possible use of alternative routes and methods of supply.
- g. The relationship of the proposed project to the present and future land use and zoning ordinances.

- h. The inconvenience or undue injury which may result to property owners as a result of the proposed project.

The utilities board may waive the proof required for such allegations which are not applicable to a particular proposed project.

The petition shall contain an affidavit stating that informational meetings were held in each county which the proposed project will affect and the time and place of each meeting.

3. For the purpose of this section, the term “public” shall not be interpreted to be limited to consumers located in this state.

2001 Acts, 1st Ex, ch 4, §34, 36
NEW subsection 3

CHAPTER 481A

WILDLIFE CONSERVATION

481A.6 Game management area.

The commission may establish a game management area upon any public lands or waters, or with the consent of the owner upon any private lands or waters, when necessary to maintain a biological balance as provided in section 481A.39 or to provide for public hunting, fishing, or trapping in conformity with sound wildlife management; and when a game management area is established, the commission shall with the consent of the owner, if any, have the right to post and prohibit, and to regulate or limit the lands or waters against trespassing, hunting, fishing, or trapping, and any violation of the regulations is unlawful.

For applicable scheduled fines, see §805.8B, subsection 3, paragraph c
Section not amended; footnote added

481A.7 Hunting on game refuges.

1. It shall be unlawful to hunt, pursue, kill, trap or take any wild animal, bird, or game on any state game refuge so established at any time of the year, and no one shall carry firearms thereon, providing, however, that predatory birds and animals may be killed or trapped under the authority and direction of the director.

2. The commission may specify the distance from a state game refuge where shooting is prohibited, and shall have notice of same posted at such distance in conspicuous places around the refuge, provided, however, this prohibition shall not apply to owners or tenants hunting on their own land outside of a state game refuge. The commission may prohibit shooting at any reasonable distance from a state game refuge deemed necessary to accomplish the purposes for which the refuge is established.

For applicable scheduled fines, see §805.8B, subsection 3, paragraph d
Unnumbered paragraphs 1 and 2 editorially designated as subsections 1 and 2

Section not amended; footnote added

481A.21 Birds as targets.

A person shall not keep or use any live pigeon or other bird as a target, to be shot at for amusement or as a test of skill in marksmanship, or shoot at a bird kept or used for such purpose, or be a party to such shooting, or lease any building, room, field, or premises, or knowingly permit the use thereof, for the purpose of such shooting. This section does not prevent any person from shooting at live pigeons, sparrows, and starlings when used in the training of hunting dogs.

For applicable scheduled fines, see §805.8B, subsection 3, paragraph c
Section not amended; footnote added

481A.22 Field and retriever meets — permit required.

All officially sanctioned field meets or trials and retriever meets or trials where the skill of dogs is demonstrated in pointing, retrieving, trailing, or chasing any game bird, game animal, or furbearing animal shall require a field trial permit. Except as otherwise provided by law, it shall be unlawful to kill any wildlife in such events. Notwithstanding the provisions of section 481A.21 it shall be lawful to hold field meets or trials and retriever meets or trials where dogs are permitted to work in exhibition or contest whereby the skill of dogs is demonstrated by retrieving dead or wounded game birds which have been propagated by licensed game breeders within the state or secured from lawful sources outside the state and lawfully brought into the state. All such birds must be released on the day of trials on premises where the trials are held.

Such birds released may be shot by official guns after having secured a permit as herein provided.

Such permits may be issued by the director of the department upon proper application and the payment of a fee of two dollars for each trial held. A representative of the department shall attend

all such trials and enforce the laws and regulations governing same.

The person or persons designated by the committee in charge to do the shooting for such trials shall be known as the official guns, and no other person shall be permitted to kill or attempt to kill any of the birds released for such trials.

Before any birds are released under this section, they must each have attached a tag provided by the department and attached by a representative of the department at a cost of not more than ten cents for each tag. All tags are to remain attached to birds until prepared for consumption.

It is unlawful for any person to hold, conduct, or to participate in a field or retriever trial before the permit required by this section has been secured or for any person to possess or remove from the trial grounds any birds which have not been tagged as herein required.

For applicable scheduled fines, see §805.8B, subsection 3, paragraph c
Section not amended; footnote added

481A.24 Use of mobile radio transmitter prohibited — exceptions.

1. For the purposes of this section:

a. “*One-way mobile radio transmitter*” means a radio capable of transmitting a signal only but not capable of transmitting a voice signal. The signal may be tracked or located by radio telemetry or located by an audible sound.

b. “*Two-way mobile radio transmitter*” means a radio capable of transmitting and receiving voice messages including, but not limited to, a citizen band radio or a cellular telephone.

2. Except as otherwise provided in this section, a person who is hunting shall not use a one-way or two-way mobile radio transmitter to communicate the location or direction of game or fur-bearing animals or to coordinate the movement of other hunters. This subsection does not apply to the hunting of coyotes except during the shotgun deer season as set by the commission under section 481A.38.

3. A licensed falconer may use a one-way mobile radio transmitter to recover a free-flying bird of prey properly banded and covered on the falconry permit.

4. A person hunting with the aid of a dog may use at any time a one-way mobile transmitter designed to track or aid in the recovery of the dog.

For applicable scheduled fines, see §805.8B, subsection 3, paragraph d
Section not amended; footnote added

481A.26 Unlawful transportation.

No person, except as otherwise provided, shall ship, carry or transport in any one day, game, fish, birds, or animals, except fur-bearing animals in excess of the number legally permitted to be in possession of such a person.

For applicable scheduled fine, see §805.8B, subsection 3, paragraph c
Section not amended; footnote added

481A.38 Prohibited acts — restrictions on the taking of wildlife — special licenses.

It is unlawful for a person to take, pursue, kill, trap or ensnare, buy, sell, possess, transport, or attempt to so take, pursue, kill, trap or ensnare, buy, sell, possess, or transport any game, protected nongame animals, fur-bearing animals or fur or skin of such animals, mussels, frogs, spawn or fish or any part thereof, except upon the terms, conditions, limitations, and restrictions set forth herein, and administrative rules necessary to carry out the purposes set out in section 481A.39, or as provided by the Code.

1. The commission may upon its own motion and after an investigation, alter, limit, or restrict the methods or means employed and the instruments or equipment used in taking wild mammals, birds subject to section 481A.48, fish, reptiles, and amphibians, if the investigation reveals that the action would be desirable or beneficial in promoting the interests of conservation, or the commission may, after an investigation when it is found there is imminent danger of loss of fish through natural causes, authorize the taking of fish by means found advisable to salvage imperiled fish populations.

The commission shall adopt a rule permitting a crossbow to be used only by individuals with disabilities who are physically incapable of using a bow and arrow under the conditions in which a bow and arrow is permitted. The commission shall prepare an application to be used by an individual requesting the status. The application shall require the individual’s physician to sign a statement declaring that the individual is not physically able to use a bow and arrow.

2. If the commission finds that the number of hunters licensed or the type of license issued to take deer or wild turkey should be limited or further regulated, the commission shall adopt procedures, by rule, for issuing the licenses. This subsection does not apply to the hunting of wild turkey on a hunting preserve licensed under chapter 484B.

3. The department and the commission shall exercise regulatory authority regarding seasons, bag limits, possession limits, locality, the method of taking, or the taking of fish and wildlife by members of the Sac and Fox tribe of the Mississippi in Iowa within the boundaries of the Sac and Fox tribe settlement in Tama county only to the extent provided in a written agreement between the tribal council of the Sac and Fox tribe of the Mississippi in Iowa and the department. The written agreement shall not be construed to supersede or impair the regulatory authority exercised by the commission pursuant to the federal Migratory Bird Treaty Act, the federal Migratory Bird Stamp Hunting Act, the federal Endangered Species Act, or other

federal law. The department and the commission shall not unreasonably fail to enter into an agreement and shall pursue such an agreement in an expedient manner. This subsection shall become effective upon signing of the written agreement by the director of the department and the chairperson of the Sac and Fox tribe of the Mississippi in Iowa.

2001 Acts, ch 134, §1, 2
For applicable scheduled fines, see §805.8B, subsection 3, paragraphs f and g
Subsection 2 amended
Subsection 3 stricken and former subsection 4 renumbered as 3

481A.47 Importing fish and game — permits.

It shall be unlawful except as otherwise provided for any person, firm or corporation, to bring into the state of Iowa for the purpose of propagating or introducing, or to place or introduce into any of the inland or boundary waters of the state, any fish or spawn thereof that are not native to such waters, or introduce or stock any bird or animal unless application is first made in writing to the commission for a permit therefor and such permit granted. Such permit shall be granted only after the commission has made such investigation or inspection of the fish, birds or animals as it may deem necessary to determine whether or not such fish, birds or animals are free from disease and whether or not such introduction will be beneficial or detrimental to the native wildlife and the people of the state, and may or may not approve such planting, releasing or introduction according to its findings. Nothing in the above shall prohibit licensed game breeders from securing native or exotic birds or animals from outside the state and bringing them into the state and they shall not be required to have a permit as provided above when such birds or animals are not released to the wild but are held on the game breeder's premises as breeding stock.

For applicable scheduled fines, see §805.8B, subsection 3, paragraph d
Section not amended; footnote added

481A.48 Restrictions on game birds and animals.

1. No person, except as otherwise provided by law, shall willfully disturb, pursue, shoot, kill, take or attempt to take or have in possession any of the following game birds or animals except within the open season established by the commission: Gray or fox squirrel, bobwhite quail, cottontail or jack rabbit, duck, snipe, pheasant, goose, woodcock, partridge, coot, rail, ruffed grouse, wild turkey, pigeons, or deer. The seasons, bag limits, possession limits and locality shall be established by the department or commission under the authority of sections 456A.24, 481A.38, and 481A.39.

2. The commission may adopt rules for the taking and possession of migratory birds which are subject to the federal "Migratory Bird Treaty Act" and "Migratory Bird Stamp Hunting Act"

during the time and in the manner permitted under those federal Acts. The commission shall not adopt a rule for the taking or possession of a migratory bird for which an open season is not authorized by another paragraph of this section.

3. The commission may by rule permit the taking and possession of designated raptors and crows during the time and in the manner permitted under the federal "Migratory Bird Treaty Act".

4. The commission shall establish methods by which pigeons may be taken which may include, but are not limited to, the use of trapping, chemical repellants, or toxic perches.

5. The commission shall establish one or more pistol or revolver seasons for hunting deer as separate firearm seasons or to coincide with one or more other firearm deer hunting seasons. Any pistol or revolver firing a magnum three hundred fifty-seven thousandths of one inch caliber or larger, centerfire, straight wall ammunition propelling an expanding-type bullet is legal for hunting deer during the pistol or revolver seasons. The commission shall adopt rules to allow black powder pistols or revolvers for hunting deer. The rules shall not allow pistols or revolvers with shoulder stock or long-barrel modifications. The barrel length of a pistol or revolver used for deer hunting shall be at least four inches. The rules may limit types of ammunition. A person who is sixteen years of age or less shall not hunt deer with a pistol or revolver. A person possessing a prohibited pistol or revolver while hunting deer commits a scheduled violation under section 805.8B, subsection 3, paragraph "h", subparagraph (5).

2001 Acts, ch 137, §5
For applicable scheduled fines, see §805.8B, subsection 3, paragraph h
Unnumbered paragraphs 1 - 5 editorially designated as subsections 1 - 5
Internal reference change applied

481A.50 Selling birds.

No part of the plumage, skin or body of any bird protected by this chapter shall be sold or had in possession for sale, irrespective of whether said bird was captured or killed within or without the state, except as otherwise provided.

For applicable scheduled fine, see §805.8B, subsection 3, paragraph c
Section not amended; footnote added

481A.52 Exhibiting catch to officer.

A person who has in possession any game bird or game animal, fish or fur or part thereof shall upon request of the director or any officer appointed by the department exhibit it to the director or officer, and a refusal to do so is a violation of the Code.

For applicable scheduled fines, see §805.8B, subsection 3, paragraph d
Section not amended; footnote added

481A.53 Chasing from dens.

It is unlawful to have in possession while hunting or to use while hunting any ferret or any device or any substance to be used for chasing animals

from their dens.

For applicable scheduled fine, see §805.8B, subsection 3, paragraph d
Section not amended; footnote added

481A.54 Shooting rifle, shotgun, pistol, or revolver over water, highway, or railroad right-of-way.

1. A person shall not shoot any rifle on or over any of the public waters or public highways of the state or any railroad right-of-way.

2. A person shall not shoot a shotgun with a slug load, pistol, or revolver on or over a public roadway as defined in section 321.1, subsection 65.

3. This section does not apply to any peace officers or military personnel in the performance of their official duties.

For applicable scheduled fines, see §805.8B, subsection 3, paragraph b
Section not amended; footnote added

481A.55 Selling game.

1. Except as otherwise provided, a person shall not buy or sell, dead or alive, a bird or animal or any part of one which is protected by this chapter, but this section does not apply to fur-bearing animals, and the skins, plumage, and antlers of legally taken game. This section does not prohibit the purchase of jackrabbits from sources outside this state. A person shall not purchase, sell, barter, or offer to purchase, sell, or barter for millinery or ornamental use the feathers of migratory game birds; and a person shall not purchase, sell, barter, or offer to purchase, sell, or barter mounted specimens of migratory game birds.

2. Section 481A.50 and this section do not apply to a game species, fur-bearing animal species, or variety of fish protected under this chapter which is sold by a nonprofit corporation as a part of a meal. The number of game of a game species or fur-bearing animal species, or a variety of fish protected by this chapter which are donated by a person to a nonprofit corporation plus any additional game of the same species or same variety of fish in the person's possession must not exceed the person's legal possession limit.

For applicable scheduled fines, see §805.8B, subsection 3, paragraph d
Unnumbered paragraphs 1 and 2 editorially designated as subsections 1 and 2

Section not amended; footnote added

481A.56 Training dogs.

1. A person having a valid hunting license may train a bird dog on any game birds and a person having a valid fur harvester license may train a coonhound, foxhound, or trailing dog on any fur-bearing animals at any time of the year including during the closed season on such birds or animals. However, the animals when pursued to a tree or den shall not be further chased or removed in any manner from the tree or den. A person having a hunting license may train a dog on coyote or groundhog.

Only a pistol, revolver, or other gun shooting blank cartridges shall be used while training dogs

during closed season except as provided in subsection 2 of this section.

2. Any pen-raised game bird may be used and may be shot in the training of bird dogs. Before any bird is released or used in the training of dogs, the bird shall have attached a band procured from the commission. The commission may charge a fee for such bands but the fee shall not exceed ten cents for each band.

3. A call back pen or live trap may be used for the purpose of retrieving banded birds when released in the wild for training purposes. Any bird not so banded when taken in a call back pen or trap shall be immediately returned unbanded to the wild. All call back pens or live traps when in use shall have attached a metal tag plainly labeled with the owner's name and address. Conservation officers shall have authority to confiscate such traps when found in use and not properly labeled.

4. The commission shall have the power to adopt rules prohibiting the training of any hunting dog on any game bird, game animal, or fur-bearing animal in the wild at any time when it has been determined that such training might have an adverse effect on the populations of these species.

For applicable scheduled fines, see §805.8B, subsection 3, paragraph c
Section not amended; footnote added

481A.58 Trapping birds or poisoning animals.

No person except those acting under the authority of the director shall capture or take or attempt to capture or take, with any trap, snare or net, any game bird, nor shall any person use any poison or any medicated or poisoned food or any other substance for the killing, capturing or taking of any game bird or animal.

For applicable scheduled fines, see §805.8B, subsection 3, paragraph d
Section not amended; footnote added

481A.60 Raising game — rulemaking authority.

A person shall not raise or sell game or fur-bearing animals of the kinds protected by this chapter, except rock doves and pigeons, without first procuring a game breeder's license as provided by law. The commission may adopt rules which ensure that all game birds, game animals, and fur-bearing animals handled and confined by licensed game breeders are provided with humane care and treatment. A violation of a rule adopted by the commission is a cause for license revocation. This section does not apply to governmental zoos and exhibits.

For applicable scheduled fines, see §805.8B, subsection 3, paragraph c
Section not amended; footnote added

481A.61 Licensed game breeders — marketing game — penalty.

1. Except as otherwise provided by law, a licensed game breeder whose original stock is obtained from a lawful source may possess any game bird, game animal, or fur-bearing animal, or any

of their parts. Possession and use of the game birds, game animals, or fur-bearing animals obtained from a licensed game breeder are lawful.

2. Fur-bearing animals shall not be acquired for breeding or propagating purposes from any source unless they have been pen-raised for at least two successive generations.

3. A game breeder's license is not a license to possess, breed, propagate, sell, or dispose of any species which is defined as endangered or threatened under state law unless the species is listed on the license. Its possession, breeding, propagation, sale, and disposal are subject to all applicable state and federal statutes.

4. A licensed game breeder shall not acquire protected live game animals, game birds, their eggs, or fur-bearing animals taken from the wild within this state.

5. Game birds or game animals may be sold for food only under the following conditions:

a. The licensed game breeder shall file with the commission a facsimile of a stamp of similar type to that used by the United States department of agriculture in grading meat.

b. Licensed game breeders may sell dressed game birds or game animals to markets for resale providing each game bird or game animal has affixed upon it in a conspicuous and legible manner the imprint of the game breeder's stamp.

c. The stamp shall bear the name and number of the game breeder in letters of at least twelve-point type size.

6. Markets selling stamped game shall:

a. Maintain the stamp on each game bird or game animal until the bird or animal is disposed of or sold.

b. Keep a record showing the total number of game birds or game animals sold together with the name and address of the game breeder from whom purchased and the number of game birds and animals in each purchase.

7. Markets selling stamped game, together with their records, are subject to inspection by an authorized representative of the commission at any reasonable time.

8. Violation of a provision of this section may be cause for license revocation.

For applicable scheduled fines, see §805.8B, subsection 3, paragraph c Section not amended; footnote added

481A.62 Records — reports — inspection.

1. A holder of a game breeder's license shall keep the records and make the reports required by this section on forms provided by the department. The records shall be open for inspection at any reasonable time by the department or its authorized agents.

2. At the time of every sale or conveyance of an animal, animal parts, or products, the licensee shall complete a game breeder's sales receipt on forms provided by the department. The forms shall require the following information:

a. The name, address, county, and license number assigned to the breeder.

b. The name and address of the purchaser.

c. The number, species, sex, and age of the animals or birds conveyed.

3. Licensees shall maintain business records for all species in an annual report record book. The records shall include the following information:

a. For each animal acquired other than by birth on the licensee's game farm, the sex and species, the date of acquisition, the number acquired, and the name and address of the source from which acquired.

b. For each animal born on the licensee's game farm, the sex, species, date of birth, and number of any band, tag, or tattoo subsequently attached to the animal.

c. For each animal sold or disposed of other than by death the same information required by the game breeder's sales receipt.

d. For each animal which dies, disappears, or is destroyed on the licensee's game farm, the sex, species, date of death, and the number of any band, tag, or tattoo attached to the animal.

The licensee's copies of the required sales receipts shall be kept with the record book and are considered a part of it.

Records required by this section shall be entered in the annual report record book within forty-eight hours of the event.

4. Each licensee shall file an annual report with the commission on or before January 31. The report shall detail the game breeder's operations during the preceding license year. The original report shall be forwarded to the department and a copy shall be retained in the breeder's file for a period of three years from the date of expiration of the breeder's last license issued. Failure to keep or submit the required records and report are grounds for a refusal to renew a license for the succeeding year.

5. An on-site inspection of facilities shall be conducted by an officer of the commission prior to the initial issuance of a game breeder's license. The facilities may be reinspected by an officer of the commission at any reasonable time.

6. Any officer of the commission may enter any place where any game bird, game animal, or fur-bearing animal is at the time located, or where it has been kept, or where the carcass of such animal may be, for the purpose of examining it in any way that may be necessary to determine whether it was or is infected with any contagious or infectious disease.

7. For the purpose of this section, infectious and contagious disease includes rabies, hoof-and-mouth disease, leptospirosis, blackhead, or any other communicable disease so designated by the commission.

8. The commission may regulate or prohibit the importation into the state and exportation from the state of any species of game bird, game

animal, or fur-bearing animal, domesticated or not, which in its opinion, for any reason, is determined to be detrimental to the health of animals within or without the state.

9. The commission may quarantine or destroy any game bird, game animal, or fur-bearing animal which is found to be infected with any contagious or infectious disease.

10. A licensed game breeder or other person having control of any game bird, game animal, or fur-bearing animal shall not knowingly offer for sale, sell, or barter such birds or animals which have an infectious or contagious disease, or allow those birds or animals to run at large or come in contact with any other game birds, game animals, or fur-bearing animals.

For applicable scheduled fines, see §805.8B, subsection 3, paragraph c
Section not amended; footnote added

481A.67 Seasons and limits.

It is unlawful for a person, except as otherwise expressly provided, to take, capture, or kill fish, frogs, or turtles except during the open season established by the commission. It is unlawful during open season to take in any one day an amount in excess of the daily catch limit designated for each variety or each locality, or have in possession any variety of fish, frog, or turtle in excess of the possession limit, or have in possession any frog, fish, or turtle at any time under the minimum length or weight. The open season, possession limit, daily catch limit, and the minimum length or weight for each variety of fish, frog, or turtle shall be established by rule of the department or commission under the authority of sections 456A.24, 481A.38, 481A.39 and 482.1.

For applicable scheduled fines, see §805.8B, subsection 3, paragraph i
Section not amended; footnote added

481A.69 Fish designated.

The commission may adopt rules designating game fish, commercial fish, and rough fish.

For applicable scheduled fines, see §805.8B, subsection 3, paragraph b
Section not amended; footnote added

481A.71 Releasing unlawful catch.

Any fish caught that is less than lawful minimum length or weight shall be handled with wet hands and released under water immediately with as little injury as possible.

For applicable scheduled fine, see §805.8B, subsection 3, paragraph b
Section not amended; footnote added

481A.72 Hooks.

A person shall not at any time take from the waters of the state any fish, except as otherwise provided in this chapter, except with hook, line, and bait, nor shall a person use more than two lines nor more than two hooks on each line in still fishing or trolling, and in fly fishing not more than two flies may be used on one line, and in trolling and bait casting not more than two trolling spoons or artificial bait may be used on one line. A person

shall not leave fish line or lines and hooks in the water unattended by being out of visual sight of the lines and hooks. One hook means a single, double, or treble pointed hook, and all hooks attached as a part of an artificial bait or lure shall be counted as one hook.

For applicable scheduled fines, see §805.8B, subsection 3, paragraph b
Section not amended; footnote added

481A.73 Trotlines and tagged lines.

In the waters of the state open to their use, a person shall not use more than five tagged lines set to take fish such as trotlines or throw lines. Such tagged lines shall not have in the aggregate more than fifteen hooks. Each separate line when in use shall have attached a tag plainly labeled with the owner's name and address, shall be checked at least once each twenty-four hours, and a person shall not use tagged lines in a stocked lake or within three hundred feet of a dam or spillway or in a stream or portion of stream, which is closed or posted against the use of such tackle. One end of such lines shall be set from the shore and be visible above the shore waterline, but no such line shall be set entirely across a stream or body of water. Any untagged or unlawful lines when found in use shall be confiscated by any officer appointed by the director.

For applicable scheduled fines, see §805.8B, subsection 3, paragraph j
Section not amended; footnote added

481A.76 Unlawful means — exception.

It is unlawful, except as otherwise provided, to use on or in the waters of the state any grabhook, snaghook, any kind of a net, seine, trap, firearm, dynamite, or other explosives, or poisonous or stupefying substances, lime, ashes, electricity, or hand fishing in the taking or attempting to take any fish, except that gaffhooks or landing nets may be used to assist in landing fish. The commission may permit designated fish to be taken by hand fishing, by snagging, by spearing, by bow and arrow, and with artificial light at the times and at the places as determined by rules of the commission.

For applicable scheduled fine, see §805.8B, subsection 3, paragraph d
Section not amended; footnote added

481A.83 Prohibited stocking.

A person shall not stock or introduce into the waters of the state a live fish, except for hooked bait, without the permission of the director. This section does not apply to privately owned ponds and lakes.

For applicable scheduled fine, see §805.8B, subsection 3, paragraph c
Section not amended; footnote added

481A.84 Frogs — catching — selling.

1. Frogs may be taken by holders of a fishing license only and they may be used for bait or food purposes, but no person shall take more than four dozen frogs in any one day or have in possession at any one time more than eight dozen frogs. Licensed bait dealers authorized by law to sell bait

may have in their possession to supply the bait needs of their customers, not more than twenty dozen frogs.

2. No person shall use any device, net, barrier or fence of any kind which prevents frogs from having free access to and egress from the water.

3. Transportation out of the state in any manner or for any purposes, of frogs taken in Iowa, is prohibited.

4. Nothing in this chapter shall be construed to prevent the purchase, sale or possession of frogs or any portion of the carcasses of frogs that have been legally taken and shipped in from without the state.

5. Nothing herein shall prevent any person from catching frogs on the person's own premises for the person's private use.

For applicable scheduled fines, see §805.8B, subsection 3, paragraph c
Unnumbered paragraphs 1 – 5 editorially designated as subsections 1

– 5

Section not amended; footnote added

481A.85 Prohibited areas.

It shall be unlawful for any person at any time, except as otherwise provided, to take any fish, minnows, frogs, or other aquatic, biological life from any state fish hatchery, nursery or other area under the jurisdiction of the commission operated for fish production purposes.

For applicable scheduled fine, see §805.8B, subsection 3, paragraph e
Section not amended; footnote added

481A.87 Open seasons.

Except as otherwise provided, a person shall not take, capture, kill, or have in possession a fur-bearing animal or any of its parts at any time except during the open season as set by the commission except where the killing, trapping, or ensnaring is for the protection of a person or public or private property with the prior permission of a duly appointed representative of the commission. If prior permission is impractical or impossible to obtain and the fur-bearing animal represents a threat to a person, domestic animal, or private property, the fur-bearing animal may be taken without prior permission. All fur-bearing animals and all parts thereof taken as provided in this section shall be disposed of on the site or shall be relinquished to a representative of the commission.

For applicable scheduled fines, see §805.8B, subsection 3, paragraph l
Section not amended; footnote added

481A.90 Disturbing dens.

1. A person shall not molest or disturb, in any manner, any den, lodge, or house of a fur-bearing animal or beaver dam except by written permission of an officer appointed by the director.

2. This section does not prohibit the owner from destroying a den to protect the owner's property.

For applicable scheduled fine, see §805.8B, subsection 3, paragraph d
Unnumbered paragraphs 1 and 2 editorially designated as subsections 1 and 2

Section not amended; footnote added

481A.91 Shooting or spearing.

No person shall kill with shotgun, or spear any beaver, mink, otter, or muskrat, or have in possession any of said animals or the carcasses, skins or parts thereof that have been killed with shotgun or spear.

For applicable scheduled fine, see §805.8B, subsection 3, paragraph d
Section not amended; footnote added

481A.92 Traps — disturbing dens — tags for traps.

1. A person shall not use or attempt to use colony traps in taking, capturing, trapping, or killing any game or fur-bearing animals except muskrats as determined by rule of the commission. Box traps capable of capturing more than one game or fur-bearing animal at each setting are prohibited. A valid hunting license is required for box trapping cottontail rabbits and squirrels. All traps and snares used for the taking of fur-bearing animals shall have a metal tag attached plainly labeled with the user's name and address. All traps and snares, except those which are placed entirely under water, shall be checked at least once every twenty-four hours. Officers appointed by the department may confiscate such traps and snares found in use that are not properly labeled or checked.

2. Except as otherwise provided, a person shall not use chemicals, explosives, smoking devices, mechanical ferrets, wire, tool, instrument, or water to remove fur-bearing animals from their dens. Humane traps, or traps designed to kill instantly, with a jaw spread, as originally manufactured, exceeding eight inches are unlawful to use except when placed entirely under water.

3. Conibear type traps and snares shall not be set on the right-of-way of a public road within two hundred yards of the entry to a private drive serving a residence without the permission of the occupant.

4. A snare when set shall not have a loop larger than eight inches in horizontal measurement except for a snare set with at least one-half of the loop under water. A snare set on private land other than roadsides within thirty yards of a pond, lake, creek, drainage ditch, stream, or river shall not have a loop larger than eleven inches in horizontal measurement.

5. All snares shall have a functional deer lock which will not allow the snare loop to close smaller than two and one-half inches in diameter.

For applicable scheduled fines, see §805.8B, subsection 3, paragraph c
Unnumbered paragraphs 1 – 5 editorially designated as subsections 1

– 5

Section not amended; footnote added

481A.93 Hunting by artificial light.

1. A person shall not throw or cast the rays of a spotlight, headlight, or other artificial light on a highway, or in a field, woodland, or forest for the purpose of spotting, locating, or taking or attempting to take or hunt a bird or animal, except rac-

coons or other fur-bearing animals when treed with the aid of dogs, while having in possession or control, either singly or as one of a group of persons, any firearm, bow, or other implement or device whereby a bird or animal could be killed or taken.

2. This section does not apply to deer being taken by or under the control of a local governmental body within its corporate limits pursuant to an approved special deer population control plan.

For applicable scheduled fine, see §805.8B, subsection 3, paragraph e
Section not amended; footnote added

481A.95 License — reciprocity.

1. A license shall be required of each fur dealer and each employee, agent, or representative of a fur dealer except when the employee, agent, or representative is operating solely on the premises of a licensed fur dealer. A fur dealer shall conduct business only at the location specified on the dealer's license, at an established fur auction, at the nonadvertised residence of a licensed fur harvester, or at the place of business specified on the license of any fur dealer. A nonresident licensed fur dealer may purchase location permits to operate at locations other than at the location specified on the fur dealer's license. A resident licensed fur dealer may obtain location permits without fee. Each location permit shall be valid only for the one location specified on the location permit and shall entitle the fur dealer and employee, agent, or representative of the licensed fur dealer to operate at that location. The commission shall, upon application and the payment of the required license fee, if any, furnish the proper license and location permits to the dealer.

2. A resident of another state shall pay the fee provided by statute for the nonresident fur dealer's license unless that state has a reciprocity agreement with this state. The reciprocity agreement must provide that each state will charge nonresidents from the other state the same fee for the nonresident fur dealer's license and the fee under the agreement must be less than the statutory fee of this state for nonresidents and higher than the statutory fee of this state for residents.

For applicable scheduled fines, see §805.8B, subsection 3, paragraph e
Unnumbered paragraphs 1 and 2 editorially designated as subsections 1 and 2

Section not amended; footnote added

481A.97 Reports.

Fur dealers shall keep accurate, current records of their transactions. The records shall show the number and kinds of hides and skins which have been purchased, the date of purchase, and the name and address of the seller. Such records shall be open at all reasonable times to inspection by the commission. On or before May 15 of each year, each fur dealer shall file a verified inventory with the commission. The inventory shall include all

transactions for the preceding year.

For applicable scheduled fines, see §805.8B, subsection 3, paragraph d
Section not amended; footnote added

481A.120 Hunting from aircraft or snowmobiles prohibited.

A person, either singly or as one of a group of persons, shall not intentionally kill or wound, attempt to kill or wound, or pursue any animal, fowl, or fish from or with an aircraft in flight or from or with any self-propelled vehicles designed for travel on snow or ice which utilize sled type runners, or skis, or an endless belt tread, or wheel or any combination thereof and which are commonly known as snowmobiles.

For applicable scheduled fine, see §805.8B, subsection 3, paragraph e
Section not amended; footnote added

481A.122 Deer hunters' orange apparel.

A person shall not hunt deer with firearms unless the person is at the time wearing one or more of the following articles of visible, external apparel: A vest, coat, jacket, sweatshirt, sweater, shirt or coveralls, the color of which shall be solid blaze orange.

For applicable scheduled fine, see §805.8B, subsection 3, paragraph d
Section not amended; footnote added

481A.123 Prohibited hunting near buildings, feedlots.

1. A person shall not discharge a firearm or shoot or attempt to shoot a game or fur-bearing animal within two hundred yards of a building inhabited by people or domestic livestock or within two hundred yards of a feedlot unless the owner or tenant has given consent. However, within the corporate limits of a city, a person may take deer with a firearm within fifty yards of a building inhabited by people or domestic livestock, or a feedlot pursuant to an approved special deer population control plan, if the person obtains permission of the owner or tenant of the building or feedlot.

2. As used in this section, "feedlot" means a lot, yard, corral, or other area in which livestock are present and confined, for the purposes of feeding and growth before 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.

For applicable scheduled fine, see §805.8B, subsection 3, paragraph c
Section not amended; footnote added

481A.126 Taxidermy.

1. "Taxidermist" as used in this section means a person engaged in the business of preserving or mounting game, fish, or fur-bearing animals as defined in this chapter.

2. A license is required for the practice of taxidermy. The commission, upon application and payment of the required license fee, shall furnish proper certificates to the applicant. The director may revoke the license for good cause.

3. A licensed taxidermist may possess at any time game, fish, or fur-bearing animals which

have been lawfully taken.

4. A taxidermist shall keep accurate records of its transactions showing the numbers and kinds of specimens received for preserving, the date of acquisition, and the name and address of the owner of the specimens.

5. A person shall not put or leave any game, fish, or fur-bearing animal in the custody of another person for the purpose of having taxidermy services performed unless each specimen has a tag attached which is signed by the possessor and states the address of the possessor, the total number and species of the specimens and the date the specimens were killed.

6. All transactions, tags, and specimens left in the custody of the taxidermist by another person shall be open to inspection by a conservation officer at any reasonable hour.

For applicable scheduled fines, see §805.8B, subsection 3, paragraph d
Section not amended; footnote added

481A.137 Abandonment of dead or injured wildlife.

1. While taking or attempting to take game or fur-bearing animals, a person shall not abandon an injured game or fur-bearing animal without making a reasonable effort to retrieve the animal from the field. A person shall not leave a useable portion of game or a fur-bearing animal in the field.

2. A person violating subsection 1 is subject to a scheduled fine as provided in section 805.8B, subsection 3, paragraph e.

3. As used in this section, “*useable portion*” means the following:

a. For game, that part of an animal which is customarily processed for human consumption.

b. For a fur-bearing animal, the fur or hide of the animal.

4. This section does not apply to pigeons or crows.

2001 Acts, ch 137, §5
Internal reference change applied

481A.142 Licensed aquaculture units — activities allowed.

A holder of an aquaculture unit license may:

1. Possess, propagate, buy, sell, deal in, and transport the aquatic organisms produced from breeding stock legally acquired, including minnows.

2. Sell fish for stocking purposes within or outside the state. Fish which are nonindigenous to Iowa shall not be received or sold in the state unless the aquaculture unit has obtained an importation permit from the department. The department shall establish, by rule, requirements governing importation, and shall include a list of approved aquaculture species. Failure to comply with this subsection will result in loss of license and a violator is subject to the scheduled fine provided in section 805.8B.

3. Hold, feed, and sell carp, buffalofish, and other fish legally taken by commercial fishers.

4. Harvest aquatic life on land under control of the aquaculture unit with commercial devices without obtaining any permits for the devices.

5. Sell bait, including minnows, frogs, and clams, propagated or raised within the licensed unit without having to obtain a bait dealer’s license. However, aquaculture units wishing to take bait from areas other than their licensed units must also obtain a bait dealer’s license.

6. Take any gull, tern, or merganser within the bounds of the unit. An owner or operator of the licensed aquaculture unit, however, must first obtain a permit for this activity from the department or the United States fish and wildlife service. Each permittee shall file an annual report with the department which itemizes the birds taken during the period covered by the permit, and dispose of birds taken according to methods established by the department. The department shall not issue a subsequent permit to any person failing to file this report.

2001 Acts, ch 137, §5
For applicable scheduled fines, see §805.8B, subsection 3, paragraph d
Internal reference change applied

481A.144 Licensed bait dealers — requirements.

1. A person shall not sell minnows, frogs, crayfish, salamanders, and mussels for fish bait without first obtaining a bait dealer’s license from the department upon payment of the license fee. A licensee shall comply with all laws pertaining to taking, possessing, and selling of bait handled by the licensee. If convicted of violating a provision of this chapter or a rule adopted pursuant to this chapter, a licensee shall forfeit the licensee’s bait dealer license upon demand of the director.

2. When taking bait from lakes and streams, bait dealers shall take only the size of bait which they can use, and shall return all small minnows and frogs to the water immediately.

3. A minnow and bait box and a tank shall be open to inspection by the department at all times. A licensee shall have tanks and bait boxes of sufficient size and with proper aeration to keep the bait alive and prevent substantial loss.

4. A person shall not take or attempt to take minnows for commercial purposes from any waters of the state or shall not transport minnows without first obtaining a bait dealer’s license. However, a person taking or transporting minnows for personal use is not required to have a bait dealer’s license.

For applicable scheduled fines, see §805.8B, subsection 3, paragraph k
Section not amended; footnote added

481A.145 Taking and selling of minnows and other bait — regulations.

1. Except for species listed as threatened or endangered under chapter 481B, a licensed bait dealer may take sufficient bait from lakes and

streams of this state that are not closed to the taking of bait, to supply the licensee's customers for hook and line fishing if the licensee is present while the bait is being taken.

2. Except as otherwise provided in this chapter, a person shall not carry, transport, ship, or cause to be carried, transported, or shipped, any minnows for the purpose of sale beyond the boundaries of the state. Minnows which are bred, hatched, propagated, or raised on a licensed aquaculture unit may be transported outside the state.

3. A person shall not transport, use, sell or offer to sell for bait or introduce into any inland waters of this state or into any waters from which the waters of the state may become stocked, any minnows or fish of the carp, quillback, gar, or dogfish species. Fish of the carp, quillback, gar, or dogfish species may be returned to the waters from which they are taken. A person shall not possess live gizzard shad at any lake in this state.

4. Minnow traps not exceeding thirty-six inches in length may be used when the taking of minnows is allowed. Each trap, when in use, shall have a metal tag attached plainly labeled with the

owner's name and address.

5. A person shall not use a minnow dip net which exceeds four feet in diameter, a cast net which exceeds ten feet in diameter, or a minnow seine which exceeds twenty feet in length or has a mesh size smaller than one-quarter inch bar measure. Licensed bait dealers may obtain a permit from the department to use minnow seines longer than twenty feet, but not exceeding fifty feet in length.

6. The department may designate certain lakes and streams, and parts of them, from which minnow populations should be protected for the best management of the lakes or streams. If an investigation of a lake or stream or a portion of a lake or stream by the department indicates that the minnow population should be protected, the lake or stream or a portion of the lake or stream shall be closed to the taking of minnows for a period of time deemed advisable by the department.

For applicable scheduled fines, see §805.8B, subsection 3, paragraphs d, and k

Section not amended; footnote added

CHAPTER 481B

ENDANGERED PLANTS AND WILDLIFE

481B.5 Prohibitions.

Except as otherwise provided in this chapter or by rule, a person shall not take, possess, transport, import, export, process, sell or offer for sale, buy or offer to buy, nor shall a common or contract carrier transport or receive for shipment, any species of fish, plants, or wildlife appearing on the following lists which shall be adopted by rule of the commission:

1. The list of fish, plants, and wildlife indigenous to the state determined to be endangered or threatened within the state pursuant to section 481B.3.

2. The United States list of endangered or

threatened native fish and wildlife as contained in the Code of Federal Regulations, Title 50, part 17 as amended to December 30, 1991.

3. The United States list of endangered or threatened plants as contained in the Code of Federal Regulations, Title 50, part 17 as amended to December 30, 1991.

4. The United States list of endangered or threatened foreign fish and wildlife as contained in the Code of Federal Regulations, Title 50, part 17 as amended to December 30, 1991.

For applicable scheduled fines, see §805.8B, subsection 3, paragraph e

Section not amended; footnote added

CHAPTER 482

COMMERCIAL FISHING

482.3 Commercial fishing — where permitted.

It is unlawful to use commercial gear in the taking of commercial fish, turtles, and mussels from the waters of the state, except as otherwise provided by statute or administrative rules of the commission.

For applicable scheduled fine, see §805.8B, subsection 3, paragraph e

Section not amended; footnote added

482.4 Commercial licenses and gear tags.

1. A person shall not use or operate commercial gear unless at least one individual at the site where the commercial gear is being operated possesses an appropriate valid commercial license, or a designated operator's license. A license is valid from the date of issue to January 10 of the succeeding calendar year.

2. A commercial fisher may designate a person as a designated operator to lift and to fish with any licensed commercial fishing gear owned by the commercial fisher. A commercial fisher shall not have more than five designated operators. A designated operator's license shall be assigned to not more than three operators during a year and a designated operator's license shall be valid for use only by an operator who possesses the license and has signed the license. The signature of any preceding designated operator who possessed the license shall be crossed out. A designated operator shall not lift or fish any commercial fishing gear without possessing a designated operator's license which is signed by the operator. A designated operator's license which is not signed by the operator in possession of the license is forfeited to the state.

3. A boundary water annual sport trotline license permits the licensee to use a maximum of four trotlines with two hundred hooks in the aggregate. All boundary water sport trotlines shall be tagged with the name and address of the licensee on a metal tag affixed above the waterline.

4. Commercial fishers and turtle fishers shall purchase gear tags from the commission to be affixed to each piece of gear in use. Notwithstanding the fee rates for gear tags of subsection 7, the minimum fee for a gear tag is five dollars. All tags are valid for ten years from the date of issue. In addition to the gear tags, all gear shall be tagged with a metal tag showing the name and address of the licensee and whether the gear is fish or turtle gear.

5. All numbered fish gear tags are interchangeable among the different types of commercial fishing gear.

6. Annual license fees are as follows:

a. Commercial fishing, resident	\$ 200.00
b. Commercial fishing, nonresident	\$ 400.00
c. Designated operator, resident	50.00
d. Designated operator, nonresident	\$ 100.00
e. Commercial turtle, resident	\$ 50.00
f. Commercial turtle, nonresident	\$ 100.00
g. Commercial mussel fisher, resident	\$ 100.00
h. Commercial mussel buyer, resident	\$ 1,000.00
i. Commercial mussel buyer, nonresident	\$ 5,000.00
j. Boundary water sport trotline, resident	\$ 10.00
k. Boundary water sport trotline, nonresident	\$ 20.00
l. Commercial mussel fisher, nonresident	\$ 2,500.00

m. Commercial mussel helper, resident

n. Commercial mussel helper, nonresident

7. Commercial fish gear tags are required on the following units of commercial fishing gear at the listed fee:

a. Seine, resident, one gear tag for each 100 feet or fraction thereof

b. Seine, nonresident, one gear tag for each 100 feet or fraction thereof

c. Trammel net, resident, one gear tag for each 100 feet or fraction thereof

d. Trammel net, nonresident, one gear tag for each 100 feet or fraction thereof

e. Gill net, resident, one gear tag for each 100 feet or fraction thereof

f. Gill net, nonresident, one gear tag for each 100 feet or fraction thereof

g. Entrapment nets, resident, one gear tag per net

h. Entrapment nets, nonresident, one gear tag per net

i. Commercial trotline, resident, one gear tag for each 50 hooks or less

j. Commercial trotline, nonresident, one gear tag for each 50 hooks or less

8. Turtle trap gear tags are not interchangeable with other commercial gear. Turtle trap gear tag fees are as follows:

a. Commercial turtle trap, resident, one gear tag per trap

b. Commercial turtle trap, nonresident, one gear tag per trap

For applicable scheduled fines, see §805.8B, subsection 3, paragraph b Section not amended; footnote added

482.6 Tagging of commercial gear.

Each trotline shall have the tags affixed to one end. Each hoop net, slat net, trap net, and turtle trap shall have the appropriate tag affixed to the end nearest the pot. Each gill net and each trammel net shall have the tags affixed to the float line nearest the shore stake, but when fished under ice, the tags shall be affixed to the float line nearest the take-out hole. Each seine shall have the tags affixed to one end.

For applicable scheduled fines, see §805.8B, subsection 3, paragraph b Section not amended; footnote added

482.7 Gear attendance.

The licensee or a designated operator must be present when lifting commercial gear. Commercial gear shall be lifted and emptied of catch as provided by the rules of the commission. Constant attendance by the licensee or a designated operator of seines, trammel nets, and gill nets is required when the gear is fished by driving, drive-seining, seining, floating, or drifting methods. Officers of

the commission shall grant a reasonable extension of gear attendance intervals in cases of inclement weather or unsafe conditions.

For applicable scheduled fines, see §805.8B, subsection 3, paragraph c Section not amended; footnote added

482.8 Baits.

1. It is lawful for licensed commercial fishers, designated operators, commercial turtle fishers, and licensed sport trotline fishers to pursue, take, possess, and transport any commercial fish or their parts, bait fish, turtles, frogs, salamanders, leeches, crayfish, or any other aquatic invertebrates for bait unless otherwise prohibited by law.

2. It is lawful to use any member of the following families as bait fish in boundary waters: Cyprinidae, the minnows; Catostomidae, the suckers; Umbridae, the mudminnows; Clupeidae, the herrings; Hiodontidae, the mooneyes; Amiidae, the bowfin unless otherwise prohibited by law.

3. It is lawful to use green sunfish, *Lepomis cyanellus*, and orange-spotted sunfish, *Lepomis humilis*, for bait fish.

4. It is lawful to use minnow seines for taking bait in the boundary waters. Minnow seines may not exceed fifty feet in length and eight feet in depth.

For applicable scheduled fines, see §805.8B, subsection 3, paragraph d Section not amended; footnote added

482.9 Unlawful methods.

It is unlawful:

1. To use commercial gear which is not in accordance with this chapter or the rules of the commission.

2. To use commercial gear within nine hundred feet from a navigation dam on the boundary waters.

3. To use commercial gear within three hundred feet from the mouth of a tributary stream emptying into the boundary waters.

4. For a person to lift or to fish licensed commercial gear of another person, except by the licensee and the licensee's designated operators.

5. To employ chemicals, electricity, or explosives into the water for taking fish, turtles, or freshwater mussels except as authorized by the director.

6. To have in one's possession game fish or other fish, turtles, or mussels deemed illegal by other provisions of law while engaged in commercial activities. A fish caught in commercial fishing that is not lawful to possess shall be handled with wet hands and immediately released under water with as little injury as possible.

7. To block or inhibit navigation through channels with commercial fishing gear unless a minimum of three feet of water depth is maintained over float lines of any entanglement gear or leads to trap nets. Gear shall not block over one-half the

width of a navigable channel if there is less than three feet of water over the gear.

For applicable scheduled fines, see §805.8B, subsection 3, paragraph e Section not amended; footnote added

482.11 Turtles.

1. A person shall not take, possess, or sell turtles from the waters of the state without an appropriate license.

a. A valid sport fishing license entitles a person to take and possess a maximum of one hundred pounds of live turtles or fifty pounds of dressed turtles. The sale of live or dressed turtles is not permitted with a sport fishing license.

b. A commercial turtle license is required to take and possess more than one hundred pounds of live or fifty pounds of dressed turtles. The holder of a commercial turtle license may sell live or dressed turtles.

c. A commercial fishing license or a designated operator's license entitles fishers to operate any licensed commercial fishing gear for taking, possessing, or selling turtles.

d. An individual possessing a valid commercial turtle license may have the assistance of one unlicensed individual in the commercial taking of turtles.

2. It is unlawful to take, possess, or sell any species of turtles except those designated by the commission by rule.

3. The method of taking turtles shall only be by hand, turtle hook, turtle trap, licensed commercial fishing gear, or other means designated by commission rules. Sport fishers may also use hook-and-line in catching turtles.

4. Any unattended fishing gear used to take turtles on a sport fishing license shall have affixed a metal tag provided by the owner bearing the owner's name and address.

For applicable scheduled fines, see §805.8B, subsection 3, paragraph n Section not amended; footnote added

482.12 Freshwater mussels.

1. A person shall not take, possess, or sell freshwater mussels from the waters of the state without an appropriate license.

a. A sport fishing license entitles a person to take and possess a maximum of twenty pounds of mussels or shells daily. The possession limit for each licensee is twenty pounds of live mussels or shells. Sale of mussels or shells is not permitted with a sport fishing license.

b. A commercial mussel license is required to take more than twenty pounds of mussels or shells daily, or possess more than twenty pounds of mussels or shells. The holder of a commercial mussel license may sell mussels or shells.

c. A commercial mussel buyer license is required to buy mussels or shells.

d. A commercial mussel helper license is required to assist commercial mussel fishers in the

possessing, processing, or transporting of commercial freshwater mussels. The taking or sale of mussels or shells is not permitted with a commercial mussel helper license.

2. A person may take all species of freshwater mussels, or their parts, except where otherwise prohibited by rules of the commission.

3. The method of taking freshwater mussels shall only be by hand, by diving, or by crowfoot bar, a device designed to catch mussels by inserting hooks between the shells, or by other means designated by rules of the commission. A crowfoot bar shall not exceed twenty feet in length and a licensee shall not fish more than three bars.

For applicable scheduled fines, see §805.8B, subsection 3, paragraph o
Section not amended; footnote added

482.15 Penalties.

A person who violates this chapter or a rule issued under this chapter is guilty of a simple misdemeanor punishable as a scheduled violation under section 805.8B, subsection 3, paragraph “e”. However, the scheduled fine specified in section 805.8B, subsection 3, paragraph “e”, does not apply to a violation of this chapter or a rule for which another scheduled fine is specified in section 805.8B, subsection 3.

2001 Acts, ch 130, §1; 2001 Acts, ch 137, §5
Section amended

CHAPTER 483A

FISHING AND HUNTING LICENSES, CONTRABAND, AND GUNS

483A.1 Licenses — fees.

Except as otherwise provided in this chapter, a person shall not fish, trap, hunt, pursue, catch, kill, take in any manner, use, have possession of, sell, or transport all or a part of any wild animal, bird, game, or fish, the protection and regulation of which is desirable for the conservation of resources of the state, without first obtaining a license for that purpose and the payment of a fee as follows:

- 1. Residents:
 - a. Fishing license \$ 10.50
 - b. Fishing license, lifetime, sixty-five years or older \$ 50.50
 - c. Hunting license \$ 12.50
 - d. Hunting license, lifetime, sixty-five years or older \$ 50.50
 - e. Deer hunting license \$ 25.50
 - f. Wild turkey hunting license ... \$ 22.50
 - g. Fur harvester license, sixteen years or older \$ 20.50
 - h. Fur harvester license, under sixteen years of age \$ 5.50
 - i. Fur dealer license \$225.50
 - j. Aquaculture unit license \$ 25.50
 - k. Bait dealer license \$ 30.50
 - l. Fishing license, seven-day \$ 8.50
 - m. Trout fishing fee \$ 10.50
 - n. Game breeder license \$ 15.50
 - o. Taxidermy license \$ 15.50
 - p. Falconry license \$ 20.50
 - q. Wildlife habitat fee \$ 8.00
 - r. Migratory game bird fee \$ 8.00
 - s. Fish habitat fee \$ 3.00
- 2. Nonresidents:
 - a. Fishing license, annual \$ 36.00
 - b. Fishing license, seven-day \$ 27.00
 - c. Hunting license, eighteen years of age or older \$ 80.00

- d. Hunting license, under eighteen years of age \$ 30.00
- e. Deer hunting license, antlered or any sex deer \$220.00
- f. Deer hunting license, antlerless deer only \$150.00
- g. Wild turkey hunting license ... \$100.00
- h. Fur harvester license \$200.00
- i. Fur dealer license \$501.00
- j. Location permit for fur dealers \$ 56.00
- k. Aquaculture unit license \$ 56.00
- l. Bait dealer license \$ 66.00
- m. Trout fishing fee \$ 13.00
- n. Game breeder license \$ 26.00
- o. Taxidermy license \$ 26.00
- p. Falconry license \$ 26.00
- q. Wildlife habitat fee \$ 8.00
- r. Migratory game bird fee \$ 8.00
- s. Fish habitat fee \$ 3.00

2001 Acts, ch 137, §5; 2001 Acts, ch 148, §1 – 3, 9
Commercial fishing licenses, see §482.4

For applicable scheduled fines, see §805.8B, subsection 3, paragraph p
2001 amendments take effect December 15, 2001, and apply to licenses and fees for years beginning on or after January 1, 2002; 2001 Acts, ch 148, §9
Section amended

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. “*License*” means a privilege granted by the commission to fish, hunt, fur harvest, pursue, catch, kill, take in any manner, use, have possession of, sell, or transport all or part of a wild animal, bird, game, or fish, including any privilege re-

lated to a license granted by issuance of a stamp or a payment of a fee.

5. “*License agent*” means an individual, business, or governmental agency authorized to sell a license.

6. “*License document*” means an authorization, certificate, or permit issued by the department or a license agent that lists and confers one or more license privileges.

7. “*Resident*” means a natural person who meets any of the following criteria:

a. Has physically resided in this state at least thirty consecutive days immediately before applying for or purchasing a resident license under this chapter and has been issued an Iowa driver’s license or an Iowa nonoperator’s identification card.

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.

d. Is a member of the armed forces of the United States serving on active duty, claims residency in this state, and has filed a state individual income tax return as a resident pursuant to chapter 422, division II, for the preceding tax year.

e. Is registered to vote in this state.

2001 Acts, ch 134, §3

NEW subsections 4 – 6 and former subsection 4 renumbered as 7

483A.2 Dual residency.

A resident license shall be limited to persons who do not claim any resident privileges, except as defined in section 483A.1A, subsection 7, paragraphs “b”, “c”, and “d”, in another state or country. A person shall not purchase or apply for any resident license or permit if that person has claimed residency in any other state or country.

Section not amended; internal reference change applied

483A.3 Wildlife habitat fee.

1. A resident or nonresident person required to have a hunting or fur harvester license shall not hunt or trap unless the person has paid the wildlife habitat fee. This section shall not apply to residents who have permanent disabilities or who are younger than sixteen or older than sixty-five years of age. Wildlife habitat fees shall be administered in the same manner as hunting and fur harvester licenses except all revenue derived from wildlife habitat fees shall be used within the state of Iowa for habitat development and shall be deposited in the state fish and game protection fund, except as provided in subsection 2. The revenue may be used for the matching of federal funds. The revenues and any matched federal funds shall be used for acquisition of land, leasing of land, or obtaining

of easements from willing sellers for use as wildlife habitats. Notwithstanding the exemption provided by section 427.1, any land acquired with the revenues and matched federal funds shall be subject to the full consolidated levy of property taxes which shall be paid from those revenues. In addition the revenue may be used for the development and enhancement of wildlife lands and habitat areas. Not less than fifty percent of all revenue from wildlife habitat fees shall be used by the commission to enter into agreements with county conservation boards or other public agencies in order to carry out the purposes of this section. The state share of funding of those agreements provided by the revenue from wildlife habitat fees shall not exceed seventy-five percent.

2. Up to sixty percent of the revenues from wildlife habitat fees which are not required under subsection 1 to be used by the commission to enter into agreements with county conservation boards or other public agencies may be credited to the wildlife habitat bond fund as provided in section 483A.53.

For applicable scheduled fines, see §805.8B, subsection 3, paragraph b
Section not amended; footnote added

483A.3A Fish habitat fee.

A resident or nonresident required to have a fishing license shall not fish unless the person has paid the fish habitat fee. Fish habitat fees shall be administered in the same manner as fishing licenses except that all revenue derived from fish habitat fees shall be deposited in the state fish and game protection fund and shall be used within this state for fish habitat development. Not less than fifty percent of the revenue from fish habitat fees shall be used by the commission to enter into agreements with county conservation boards to carry out the purposes of this section. This section shall not apply to residents who are younger than sixteen years of age or are sixty-five years of age or more, or to residents or nonresidents when fishing in privately owned farm ponds or lakes.

2001 Acts, ch 148, §4, 9

Section takes effect December 15, 2001, and applies to licenses and fees for years beginning on or after January 1, 2002; 2001 Acts, ch 148, §9
NEW section

483A.6 Trout fishing fee.

Any person required to have a fishing license shall not possess trout unless that person has paid the trout fishing fee. The proceeds from the fee shall be used exclusively for the trout program designated by the commission. The commission may grant a permit to a community event in which trout will be stocked in water which is not designated trout water and a person may catch and possess trout during the period and from the water covered by the permit without having paid the trout fishing fee.

For applicable scheduled fine, see §805.8B, subsection 3, paragraph b
Section not amended; footnote added

483A.7 Wild turkey license and tag.

1. A resident hunting wild turkey who is required to have a license must have a resident hunting license in addition to the wild turkey hunting license and must pay the wildlife habitat fee. Upon application and payment of the required fees for archery-only licenses, a resident archer shall be issued two wild turkey licenses for the spring season.

2. The wild turkey hunting license shall be accompanied by a tag designed to be used only once. If a wild turkey is taken, the wild turkey shall be tagged and the tag shall be dated.

3. A nonresident wild turkey hunter is required to have a nonresident hunting license and a nonresident wild turkey hunting license and pay the wildlife habitat fee. The commission shall annually limit to two thousand three hundred licenses the number of nonresidents allowed to have wild turkey hunting licenses. Of the two thousand three hundred licenses, one hundred fifty licenses shall be valid for hunting with muzzle loading shotguns only. The number of nonresident wild turkey hunting licenses shall be determined as provided in section 481A.38. The commission shall allocate the nonresident wild turkey hunting licenses issued among the zones based on the populations of wild turkey. A nonresident applying for a wild turkey hunting license must exhibit proof of having successfully completed a hunter safety and ethics education program as provided in section 483A.27 or its equivalent as determined by the department before the license is issued.

2001 Acts, ch 134, §4; 2001 Acts, ch 148, §5, 9
For applicable scheduled fines, see §805.8B, subsection 3, paragraph c
2001 amendment to subsection 3 takes effect December 15, 2001, and applies to licenses and fees for years beginning on or after January 1, 2002;
2001 Acts, ch 148, §9
Subsections 2 and 3 amended

483A.8 Deer license and tag.

1. A resident hunting deer who is required to have a hunting license must have a resident hunting license in addition to the deer hunting license and must pay the wildlife habitat fee.

2. The deer hunting license shall be accompanied by a tag designed to be used only once. When a deer is taken, the deer shall be tagged and the tag shall be dated.

3. A nonresident hunting deer is required to have a nonresident hunting license and a nonresident deer license and must pay the wildlife habitat fee. The commission shall annually limit to eight thousand five hundred licenses the number of nonresidents allowed to have deer hunting licenses. Of the first six thousand nonresident deer licenses issued, not more than thirty-five percent of the licenses shall be bow season licenses and, after the first six thousand nonresident deer licenses have been issued, all additional licenses shall be issued for antlerless deer only. The number of nonresident deer hunting licenses shall be

determined as provided in section 481A.38. The commission shall allocate the nonresident deer hunting licenses issued among the zones based on the populations of deer. However, a nonresident applicant may request one or more hunting zones, in order of preference, in which the applicant wishes to hunt. If the request cannot be fulfilled, the applicable fees shall be returned to the applicant. A nonresident applying for a deer hunting license must exhibit proof of having successfully completed a hunter safety and ethics education program as provided in section 483A.27 or its equivalent as determined by the department before the license is issued.

4. The commission may provide, by rule, for the issuance of an additional antlerless deer license to a person who has been issued an antlerless deer license. The rules shall specify the number of additional antlerless deer licenses which may be issued, and the season and zone in which the license is valid. The fee for an additional antlerless deer license shall be ten dollars for residents.

5. A nonresident owning land in this state may apply for one of the six thousand nonresident deer licenses and the provisions of subsection 3 shall apply. However, if a nonresident owning land in this state is unsuccessful in the drawing, the landowner shall be given preference for one of the two thousand five hundred antlerless only nonresident deer licenses. A nonresident owning land in this state shall pay the fee for a nonresident antlerless only deer license and the license shall be valid to hunt on the nonresident's land only. A nonresident owning land in this state is eligible for only one nonresident deer license annually. If one or more parcels of land have multiple nonresident owners, only one of the nonresident owners is eligible for a nonresident antlerless only deer license. If a nonresident jointly owns land in this state with a resident, the nonresident shall not be given preference for a nonresident antlerless only deer license. The department may require proof of land ownership from a nonresident landowner applying for a nonresident antlerless only deer license.

2001 Acts, ch 134, §5; 2001 Acts, ch 148, §6, 7, 9
For applicable scheduled fines, see §805.8B, subsection 3, paragraph c
2001 amendments to subsection 3 and adding subsection 5 take effect December 15, 2001, and apply to licenses and fees for years beginning on or after January 1, 2002; 2001 Acts, ch 148, §9
Subsections 2 and 3 amended
NEW subsection 5

483A.10 Issuance of licenses.

The licenses issued pursuant to this chapter shall be issued by the department or the license agents as specified by rules of the commission. A county recorder may issue licenses subject to the rules of the commission. The rules shall include the application procedures as necessary. The licenses shall show the total cost of the license including a writing fee to be retained by the license

agent and any administrative fees to be forwarded to the department, if applicable. A person authorized to issue a license or collect a fee pursuant to this chapter or chapter 484A shall charge the fee specified in this chapter or chapter 484A only plus a writing fee and administrative fee, if applicable.

2001 Acts, ch 134, §6
Section amended

483A.11 License agents.

The director may designate license agents for the sale of licenses, but in so doing the interest of the state shall be fully protected.

2001 Acts, ch 134, §7
Section amended

483A.12 Fees.

The license agent shall be responsible for all fees for the issuance of hunting, fishing, and fur harvester licenses sold by the license agent. All unused license blanks shall be surrendered to the department upon the department's demand.

A license agent shall retain a writing fee of fifty cents from the sale of each license except that the writing fee for a free deer or wild turkey license as authorized under section 483A.24, subsection 2, shall be one dollar. If a county recorder is a license agent, the writing fees retained by the county recorder shall be deposited in the general fund of the county.

2001 Acts, ch 134, §8
Section amended

483A.13 Destroyed blanks.

When license blanks in the possession of a license agent are accidentally destroyed, the holder of the blanks shall only be relieved from accountability upon the presentation of satisfactory explanation and the filing of a bond to the director that the blanks have actually been so destroyed. The commission may determine by rule what shall constitute a satisfactory explanation of the occurrence.

2001 Acts, ch 134, §9
Section amended

483A.14 Duplicate licenses and permits.

When any license for which a fee has been set has been lost, destroyed, or stolen, the director or a license agent may issue a replacement license, if evidence is available to demonstrate issuance of the original license and a fee of two dollars is paid, to be placed in the fish and game protection fund. If, on examination of the evidence, the director or the license agent, as the case may be, is satisfied that the license has been lost, destroyed, or stolen, the director or the license agent shall issue a duplicate license which shall be plainly marked "duplicate" and the duplicate shall serve in lieu of the original license and it shall contain the same information and signature as the original. The license agent shall charge a writing fee of one dollar and the departmental administrative fee for each duplicate license issued pursuant to this section.

The license agent shall retain the writing fee.

2001 Acts, ch 134, §10
Section amended

483A.17 Tenure of license.

Every license, except as otherwise provided in this chapter, is 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.

2001 Acts, ch 134, §11
Section amended

483A.19 Showing license document to officer.

Every person shall, while fishing, hunting, or fur harvesting, show the person's license document to any peace officer or the owner or person in lawful control of the land or water upon which licensee may be hunting, fishing, or fur harvesting when requested by the persons to do so. Any failure to so carry or refusal to show or so exhibit the person's license document shall be a violation of this chapter. However, except for possession and exhibition of deer licenses and tags or wild turkey licenses and tags, a person charged with violating this section shall not be convicted if the person produces in court, within a reasonable time, a license document for hunting, fishing, or fur harvesting issued to that person and valid when the person was charged with a violation of this section.

2001 Acts, ch 134, §12
For applicable scheduled fines, see §805.8B, subsection 3, paragraph b
Section amended

483A.21 Revocation or suspension.

Upon the conviction of a licensee of any violation of chapter 481A, or of this chapter, or of any administrative order adopted and published by the commission, the magistrate may, as a part of the judgment, revoke one or more license privileges of the licensee, or suspend the privileges for any definite period.

The magistrate shall revoke the hunting license or suspend the privilege of procuring a hunting license for a period of one year of any person who has been convicted twice within a year of trespassing while hunting. If any of the license privileges of a licensee who purchased more than one license privilege is revoked, the remaining license privileges of the licensee shall still be valid and the magistrate shall enter on the license document the privilege that is revoked. A person shall not purchase a license for a privilege that was revoked or suspended during the period of revocation or suspension.

In addition to other civil and criminal penalties imposed for illegally taking or possessing an elk, antelope, buffalo, or moose, the court shall revoke the hunting license of a violator. The violator shall not be allowed to procure a hunting license for the next two calendar years.

2001 Acts, ch 134, §13
Unnumbered paragraphs 1 and 2 amended

483A.22 Record of revocation.

When a license is revoked, the date, cause, and tenure of such revocation shall be kept on file with the license records of the commission. The commission may refuse the issuance of a new license to any person whose license has been revoked.

2001 Acts, ch 134, §14
Section amended

483A.23 Game birds or animals as pets.

Any person may possess not more than two game birds or fur-bearing animals confined as pets without being required to purchase a license as a game breeder, but the person shall not be allowed to increase the person's stock beyond the original number nor shall the person be allowed to kill or sell such stock. Game birds or animals confined as authorized in this section must be obtained from a licensed game breeder or a legal source outside of this state.

For applicable scheduled fines, see §805.8B, subsection 3, paragraph c
Section not amended; footnote added

483A.24 When license not required — special licenses.

1. Owners or tenants of land, and their juvenile children, may hunt, fish or trap upon such lands and may shoot by lawful means ground squirrels, gophers, or woodchucks upon adjacent roads without securing a license so to do; except, special licenses to hunt deer and wild turkey shall be required of owners and tenants but they shall not be required to have a special wild turkey hunting license to hunt wild turkey on a hunting preserve licensed under chapter 484B.

2. a. As used in this subsection:

(1) *"Family member"* means a resident of Iowa who is the spouse or child of the owner or tenant and who resides with the owner or tenant.

(2) *"Farm unit"* means all parcels of land, not necessarily contiguous, which are operated as a unit for agricultural purposes and which are under the lawful control of the owner or tenant.

(3) *"Owner"* means an owner of a farm unit who is a resident of Iowa and who is one of the following:

(a) Is the sole operator of the farm unit.

(b) Makes all of the farm operation decisions but contracts for custom farming or hires labor for all or part of the work on the farm unit.

(c) Participates annually in farm operation decisions or cropping practices on specific fields of the farm unit that are rented to a tenant.

(d) Raises specialty crops on the farm unit including, but not limited to, orchards, nurseries, or tree farms that do not always produce annual income but require annual operating decisions about maintenance or improvement.

(e) Has all or part of the farm unit enrolled in a long-term agricultural land retirement program of the federal government.

An *"owner"* does not mean a person who owns a

farm unit and who employs a farm manager or third party to operate the farm unit, or a person who owns a farm unit and who rents the entire farm unit to a tenant who is responsible for all farm operations. However, this paragraph does not apply to an owner who is a parent of the tenant and who resides in this state.

(4) *"Tenant"* means a person who is a resident of Iowa and who rents and actively farms a farm unit owned by another person. A member of the owner's family may be a tenant. A person who works on the farm for a wage and is not a family member does not qualify as a tenant.

b. Upon written application on forms furnished by the department, the department shall issue annually without fee one deer or one wild turkey license, or both, to the owner of a farm unit or to a member of the owner's family, but not to both, and to the tenant or to a member of the tenant's family, but not to both. The deer hunting license or wild turkey hunting license issued shall be valid only on the farm unit for which an applicant qualifies pursuant to this subsection and shall be equivalent to the least restrictive license issued under section 481A.38. The owner or the tenant need not reside on the farm unit to qualify for a free license to hunt on that farm unit. A free deer hunting license issued pursuant to this subsection shall be valid during all shotgun deer seasons.

c. In addition to the free deer hunting license received, an owner of a farm unit or a member of the owner's family and the tenant or a member of the tenant's family may purchase a deer hunting license for any option offered to paying deer hunting licensees. An owner of a farm unit or a member of the owner's family and the tenant or a member of the tenant's family may also purchase two additional antlerless deer hunting licenses which are valid only on the farm unit for a fee of ten dollars each.

d. If the commission establishes a deer hunting season to occur in the first quarter of a calendar year that is separate from a deer hunting season that continues from the last quarter of the preceding calendar year, each owner and each tenant of a farm unit located within a zone where a deer hunting season is established, upon application, shall be issued a free deer hunting license for each of the two calendar quarters. Each license is valid only for hunting on the farm unit of the owner and tenant.

3. The director shall provide up to twenty-five nonresident deer hunting licenses for allocation as requested by a majority of a committee consisting of the majority leader of the senate, speaker of the house of representatives, and director of the department of economic development, or their designees. The licenses provided pursuant to the subsection shall be in addition to the number of nonresident licenses authorized pursuant to section

483A.8. The purpose of the special nonresident licenses is to allow state officials and local development groups to promote the state and its natural resources to nonresident guests and dignitaries. Photographs, videotapes, or any other form of media resulting from the hunting visitation shall not be used for political campaign purposes. The nonresident licenses shall be issued without application upon payment of the nonresident deer hunting license fee and the wildlife habitat fee. The licenses are valid in all zones open to deer hunting. The hunter safety and ethics education certificate requirement pursuant to section 483A.27 is waived for a nonresident issued a license pursuant to this subsection.

4. The director shall provide up to twenty-five nonresident wild turkey hunting licenses for allocation as requested by a majority of a committee consisting of the majority leader of the senate, speaker of the house of representatives, and director of the department of economic development, or their designees. The licenses provided pursuant to the subsection shall be in addition to the number of nonresident licenses authorized pursuant to section 483A.7. The purpose of the special nonresident licenses is to allow state officials and local development groups to promote the state and its natural resources to nonresident guests and dignitaries. Photographs, videotapes, or any other form of media resulting from the hunting visitation shall not be used for political campaign purposes. The nonresident licenses shall be issued without application upon payment of the nonresident wild turkey hunting license fee and the wildlife habitat fee. The licenses are valid in all zones open to wild turkey hunting. The hunter safety and ethics education certificate requirement pursuant to section 483A.27 is waived for a nonresident issued a license pursuant to this subsection.

5. A resident or nonresident of the state under sixteen years of age is not required to have a license to fish in the waters of the state. However, residents and nonresidents under sixteen years of age must pay the trout fishing fee to possess trout or they must fish for trout with a licensed adult who has paid the trout fishing fee and limit their combined catch to the daily limit established by the commission.

6. A license shall not be required of minor pupils of the state school for the blind, state school for the deaf, or of minor residents of other state institutions under the control of an administrator of a division of the department of human services. In addition, a person who is on active duty with the armed forces of the United States, on authorized leave from a duty station located outside of this state, and a resident of the state of Iowa shall not be required to have a license to hunt or fish in this state. The military person shall carry the person's leave papers and a copy of the person's current earnings statement showing a deduction for Iowa income taxes while hunting or fishing. In lieu of

carrying the person's earnings statement, the military person may also claim residency if the person is registered to vote in this state. If a deer or wild turkey is taken, the military person shall immediately contact a state conservation officer to obtain an appropriate tag to transport the animal. A license shall not be required of residents of county care facilities or any person who is receiving old-age assistance under chapter 249.

7. A resident of the state under sixteen years of age is not required to have a hunting license to hunt game if accompanied by the minor's parent or guardian or in company with any other competent adult with the consent of the minor's parent or guardian, if the person accompanying the minor possesses a valid hunting license; however, there must be one licensed adult accompanying each person under sixteen years of age. The minor must have a deer hunting license to hunt deer and a wild turkey hunting license to hunt wild turkey.

8. A person having a dog entered in a licensed field trial is not required to have a hunting license or fur harvester license to participate in the event or to exercise the person's dog on the area on which the field trial is to be held during the twenty-four hour period immediately preceding the trial.

9. The commission shall issue without charge a special fishing license to residents of Iowa sixteen years or more of age who the commission finds have severe mental or physical disabilities. The commission is hereby authorized to prepare an application to be used by the person requesting the special license, which would require that the person's attending physician sign the form declaring that the person has a severe mental or physical disability and is eligible for exempt status.

10. No person shall be required to have a special wild turkey license to hunt wild turkey on a hunting preserve licensed under chapter 484B.

11. A lessee of a camping space at a campground may fish on a private lake or pond on the premises of the campground without a license if the lease confers an exclusive right to fish in common with the rights of the owner and other lessees.

12. The department may issue a permit, subject to conditions established by the department, which authorizes patients of a substance abuse facility, residents of health care facilities licensed under chapter 135C, and persons cared for in juvenile shelter care homes as provided for in chapter 232 to fish without a license as a supervised group.

13. Upon payment of the fee of thirty dollars for a lifetime hunting and fishing combined license, the department shall issue a hunting and fishing combined license to a resident of Iowa who is a veteran, as defined in section 35.1, who was disabled or was a prisoner of war during that veteran's military service. The department shall prepare an application to be used by a person requesting a hunting and fishing combined license under this subsection. The commission of veterans affairs shall assist the department in verifying the

status or claims of applicants under this subsection. As used in this subsection, “disabled” means entitled to compensation under the United States Code, Title 38, chapter 11.

14. The department shall issue without charge a special annual fishing or combined hunting and fishing license to residents of this state who have permanent disabilities and whose income falls below the federal poverty guidelines as published by the United States department of health and human services or residents of this state who are sixty-five years of age or older and whose income falls below the federal poverty guidelines as published by the United States department of health and human services. The commission shall provide for, by rule, an application to be used by an applicant requesting a special license. The commission shall require proof of age, income, and proof of permanent disability.

2001 Acts, ch 134, §15; 2001 Acts, ch 148, §§, 9
For applicable scheduled fines, see §805.8B, subsection 3, paragraph c
2001 amendment to subsection 2, paragraph c, takes effect December 15, 2001, and applies to licenses and fees for years beginning on or after January 1, 2002; 2001 Acts, ch 148, §9
Subsection 2, paragraph c amended
Subsection 5 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.

For applicable scheduled fines, see §805.8B, subsection 3, paragraph c
Section not amended; footnote added

483A.27 Hunter safety and ethics education program — license requirement.

1. A person born after January 1, 1967, shall not obtain a hunting license unless the person has satisfactorily completed a hunter safety and ethics education course approved by the commission. A person who is eleven years of age or more may enroll in an approved hunter safety and ethics education course, but a person who is eleven years of age and who has successfully completed the course shall be issued a certificate of completion which becomes valid on the person’s twelfth birthday. A certificate of completion from an approved hunter safety and ethics education course issued in this state since 1960, by another state, or by a foreign nation, is valid for the requirements of this section.

2. A certificate of completion shall not be issued to a person who has not satisfactorily completed a minimum of ten hours of training in an approved hunter safety and ethics education course. The department shall establish the curriculum for the first ten hours of an approved hunter safety and ethics education course offered in this state. Upon completion of the ten-hour curriculum, each person shall pass an individual oral test or a written test provided by the department. The department shall establish the criteria for successfully

passing the tests. Based on the results of the test and demonstrated safe handling of a firearm, the instructor shall determine the persons who shall be issued a certificate of completion.

3. The department shall provide a manual on hunter safety education which shall be used by all instructors and persons receiving hunter safety and ethics education training in this state.

4. The department shall provide for the certification of persons who wish to become hunter safety and ethics instructors. A person shall not act as an instructor in hunter safety and ethics education as provided in this section without first obtaining an instructor’s certificate from the department.

5. An officer of the department or a certified instructor may issue a certificate to a person who has not completed the hunter safety and ethics education course but meets the criteria established by the commission.

6. A public or private school or organization approved by the department may co-operate with the department in providing a course in hunter safety and ethics education as provided in this section.

7. A hunting license obtained under this section by a person who gave false information or presented a fraudulent certificate of completion shall be revoked and a new hunting license shall not be issued for at least two years from the date of conviction. A hunting license obtained by a person who was born after January 1, 1967, but has not satisfactorily completed the hunter safety and ethics education course or has not met the requirements established by the commission, shall be revoked.

8. The commission shall adopt rules in accordance with chapter 17A as necessary to carry out the administration of this section.

9. The initial hunter safety certificate shall be issued without cost. A duplicate certificate shall be issued at a cost of three dollars.

10. A person under eighteen years of age who is required to exhibit a valid hunting license, shall also exhibit a valid certificate of completion from a state approved hunter safety and ethics education course upon request of an officer of the department. A failure to carry or refusal to exhibit the certificate of completion as provided in this subsection is a violation of this chapter. A violator is guilty of a simple misdemeanor as provided in section 483A.42.

11. A hunter safety and ethics instructor certified by the department shall be allowed to conduct an approved hunter safety and ethics education course on public school property with the approval of a majority of the board of directors of the school district. The conduct of an approved hunter safety and ethics education course is not a violation of any public policy, rule, regulation, resolution, or ordinance which prohibits the possession, display, or use of a firearm, bow and arrow, or other hunt-

ing weapon on public school property or other public property in this state.

2001 Acts, ch 176, §43
For applicable scheduled fines, see §805.8B, subsection 3, paragraph b
NEW subsection 11

483A.36 Manner of conveyance.

No person, except as permitted by law, shall have or carry a gun in or on a vehicle on a public highway, unless the gun is taken down or totally contained in a securely fastened case, and its barrels and magazines are unloaded.

For applicable scheduled fine, see §805.8B, subsection 3, paragraph r
Section not amended; footnote added

483A.37 Prohibited guns.

No person shall use a swivel gun, nor any other firearm, except such as is commonly shot from the

shoulder or hand in the hunting, killing or pursuit of game, and no such gun shall be larger than number 10 gauge.

For applicable scheduled fines, see §805.8B, subsection 3, paragraph d
Section not amended; footnote added

483A.42 Penalties.

A person who violates this chapter is guilty of a simple misdemeanor punishable as a scheduled violation under section 805.8B, subsection 3, paragraph "e". However, the scheduled fine specified in section 805.8B, subsection 3, paragraph "e", does not apply to a violation of this chapter for which another scheduled fine is specified in section 805.8B, subsection 3.

2001 Acts, ch 130, §2; 2001 Acts, ch 137, §5
Section amended

CHAPTER 484A

MIGRATORY GAME BIRDS

484A.2 Fee required.

A person sixteen years of age or older shall not hunt or take any migratory game bird within this state without first paying a migratory game bird

fee. The director shall determine the means and method of collecting the migratory game bird fees.

For applicable scheduled fine, see §805.8B, subsection 3, paragraph a
Section not amended; footnote added

CHAPTER 490

BUSINESS CORPORATIONS

490.122 Filing, service, and copying fees.

1. The secretary of state shall collect the following fees when the documents described in this subsection are delivered to the secretary's office for filing:

DOCUMENT	FEE
a. Articles of incorporation	\$ 50
b. Application for use of indistinguishable name	\$ 10
c. Application for reserved name	\$ 10
d. Notice of transfer of reserved name	\$ 10
e. Application for registered name per month or part thereof	\$ 2
f. Application for renewal of registered name	\$ 20
g. Corporation's statement of change of registered agent or registered office or both	No fee
h. Agent's statement of change of registered office for each affected corporation	No fee
i. Agent's statement of resignation	No fee
j. Amendment of articles of incorporation	\$ 50
k. Restatement of articles of incorporation with amendment of articles	\$ 50

l. Articles of merger or share exchange	\$ 50
m. Articles of dissolution	\$ 5
n. Articles of revocation of dissolution	\$ 5
o. Certificate of administrative dissolution	No fee
p. Application for reinstatement following administrative dissolution	\$ 5
q. Certificate of reinstatement	No fee
r. Certificate of judicial dissolution	No fee
s. Application for certificate of authority	\$100
t. Application for amended certificate of authority	\$100
u. Application for certificate of withdrawal	\$ 10
v. Certificate of revocation of authority to transact business	No fee
w. Articles of correction	\$ 5
x. Application for certificate of existence or authorization	\$ 5
y. Any other document required or permitted to be filed by this chapter	\$ 5

2. The secretary of state shall collect a fee of five dollars each time process is served on the sec-

retary under this chapter. The party to a proceeding causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding.

3. The secretary of state shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

- a. \$1.00 a page for copying.
- b. \$5.00 for the certificate.

Authority to refund fees; 2000 Acts, ch 1231, §32; 2001 Acts, ch 187, §26
Section not amended; footnote revised

490.140 Definitions.

In this chapter, unless the context requires otherwise:

1. “*Articles of incorporation*” include amended and restated articles of incorporation and articles of merger.

2. “*Authorized shares*” means the shares of all classes a domestic or foreign corporation is authorized to issue.

3. “*Conspicuous*” means so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics or boldface or contrasting color, or typing in capitals or underlined, is conspicuous.

4. “*Cooperative association*” means an entity which is structured and operated on a cooperative basis pursuant to 26 U.S.C. § 1381(a) and which meets the definitional requirements of an association as provided in 12 U.S.C. § 1141(j)(a) or 7 U.S.C. § 291.

5. “*Corporation*” or “*domestic corporation*” means a corporation for profit, which is not a foreign corporation, incorporated under or subject to this chapter.

6. “*Deliver*” includes mail delivery.

7. “*Distribution*” means a direct or indirect transfer of money or other property, except its own shares, or inurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness; or otherwise.

8. “*Effective date of notice*” is defined in section 490.141.

9. “*Employee*” includes an officer but not a director. A director may accept duties that make the director also an employee.

10. “*Entity*” includes corporation and foreign corporation; not-for-profit corporation; profit and not-for-profit unincorporated association; business trust, estate, partnership, trust, and two or more persons having a joint or common economic interest; and state, United States, and foreign government.

11. “*Foreign corporation*” means a corporation for profit incorporated under a law other than the law of this state.

12. “*Governmental subdivision*” includes authority, city, county, district, township, and other political subdivision.

13. “*Includes*” denotes a partial definition.

14. “*Individual*” includes the estate of an incompetent, a ward, or a deceased individual.

15. “*Means*” denotes an exhaustive definition.

16. “*Notice*” is defined in section 490.141.

17. “*Person*” means a person as defined in section 4.1.

18. “*Principal office*” means the office, in or out of this state, so designated in the biennial report, where the principal executive offices of a domestic or foreign corporation are located.

19. “*Proceeding*” includes civil suit and criminal, administrative, and investigatory action.

20. “*Record date*” means the date established under division VI or VII on which a corporation determines the identity of its shareholders for purposes of this chapter.

21. “*Secretary*” means the corporate officer to whom the board of directors has delegated responsibility under section 490.840, subsection 3, for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.

22. “*Share*” means the unit into which the proprietary interests in a corporation are divided.

23. “*Shareholder*” means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

24. “*State*”, when referring to a part of the United States, includes a state and commonwealth and their agencies and governmental subdivisions, and a territory and insular possession and their agencies and governmental subdivisions, of the United States.

25. “*Subscriber*” means a person who subscribes for shares in a corporation, whether before or after incorporation.

26. “*United States*” includes a district, authority, bureau, commission, department, and any other agency of the United States.

27. “*Voting group*” means all shares of one or more classes or series that under the articles of incorporation or this chapter are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this chapter to vote generally on the matter are for that purpose a single voting group.

2001 Acts, ch142, §1

NEW subsection 4 and former subsections 4 – 26 renumbered as 5 – 27

490.629 Reversion of disbursements to cooperative associations.

1. As used in this section, “*disbursement*” means an amount of any distribution or any other increment or sum realized or accruing from stock or other equity interest in a cooperative associa-

tion organized under this chapter.

2. Once a person's stock or other equity interest in a cooperative association organized under this chapter is deemed abandoned under section 556.5, any disbursement held by the cooperative association for or owing to the person shall be subject to the same requirements as provided in section 499.30A that apply to a cooperative association organized under chapter 499, including all of the following:

a. The retention of the disbursement in a reversion fund established by the cooperative association or the delivery of the disbursement to the

treasurer of state.

b. The payment of the disbursement to a person filing a claim with the cooperative association who asserts an interest in the disbursement.

c. The forfeiture of the disbursement to the cooperative association, and the use of the forfeited disbursement by the cooperative association in order to teach and promote cooperation or provide for economic development, including creating economic opportunities for its shareholders.

2001 Acts, ch 142, §2
NEW section

CHAPTER 496B

ECONOMIC DEVELOPMENT CORPORATIONS

496B.3 Authorized corporations.

There is hereby authorized to be incorporated under the Iowa business corporation Act, chapter 490, development corporations which meet and comply with the requirements of this chapter. Such corporations shall be subject to and have the powers and privileges conferred by the provisions of this chapter and those provisions of the Iowa business corporation Act, chapter 490, which are not inconsistent with and to the extent not restricted or limited by the provisions of this chapter. No corporation shall be deemed incorporated pursuant to and under the provisions of this chapter unless the same is approved by the department and unless its articles of incorporation provide that it is incorporated pursuant to this chapter. To assure a broad base from which development corporations may obtain loans from members, the department at its discretion may limit the number of development corporations organized and existing pursuant to this chapter to one or more such corporations.

2001 Acts, ch 24, §63
Section amended

496B.6 Powers.

Any development corporation shall, subject to the restrictions and limits herein contained, have the following powers:

1. To make contracts and incur liabilities for any of the purposes of the development corporation; provided that no development corporation shall incur any secondary liability by way of guaranty or endorsement of the obligations of any person, firm, corporation, joint stock company, association, or trust, or in any other manner.

2. To borrow money either from its members or pursuant to lending arrangements entered into under the authority granted in subsection 7 of this section, or both from its members and pursuant to said lending arrangements, and to issue therefor

its bonds, debentures, notes, or other evidences of indebtedness, whether secured or unsecured, and when necessary to secure the same by mortgage, pledge, deed of trust, or other lien on its property, franchises, rights, and privileges of every kind and nature, or any part thereof or interest therein, without securing shareholder or member approval; provided, that no loan to a development corporation shall be secured in any manner unless all outstanding loans to such corporation, and for which loan or loans no subordination agreement has been entered into between the respective loan maker and the development corporation, shall be secured equally and ratably in proportion to the unpaid balance of such loans and in the same manner.

3. To make loans to any person, firm, corporation, joint stock company, association, or trust and to establish and regulate the terms and conditions with respect to any such loans, and the charges for interest and service connected therewith.

4. To acquire the good will, business, rights, real and personal property, and other assets, or any part thereof, or interest therein, of any persons, firms, corporations, associations, or trusts, and to assume, undertake, or pay the obligations, debts, and liabilities of any such person, firm, corporation, association, or trust; to acquire, construct or reconstruct, alter, repair, maintain, operate, sell, convey, transfer, lease, or otherwise dispose of industrial plants and business establishments.

5. To cooperate with and avail itself of the facilities of the department and to cooperate with and assist and otherwise encourage organizations in the various communities of the state of Iowa in the promotion, assistance, and development of business prosperity and economic welfare of such communities or of this state or any part thereof.

6. To do all acts and things necessary or convenient to carry out the powers expressly granted in

this chapter and such other powers not in conflict herewith granted under the Iowa business corporation Act, chapter 490.

7. To enter into lending arrangements with state and federal agencies or instrumentalities whereby the development corporation may participate in lending operations or secure guarantees or qualify under applicable laws to further state or federal lending programs by becoming a participant therein.

2001 Acts, ch 24, §64
Subsection 6 amended

496B.8 Stockholders' privileges.

Notwithstanding any rule at common law or any provision of any general or special law or any provision in their respective articles of incorporation, agreements of association, or trust indentures:

1. Any person, as defined in the Iowa business corporation Act, chapter 490, is hereby authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of any bond, security or other evidences of indebtedness created by, or the shares of the capital stock of, development corporations, and while owners of said shares to exercise all the rights, powers and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory agency of this state.

2. Any financial institution is hereby authorized to become a member of a development corporation and to make loans to such corporation.

3. Any financial institution which does not become a member of a development corporation shall not be permitted to acquire any shares of the capital stock of such development corporation.

4. Each financial institution which becomes a member of a development corporation is hereby authorized to acquire, purchase, hold, sell, assign, mortgage, pledge, or otherwise dispose of any bonds, securities or other evidences of indebtedness created by, or the shares of the capital stock of, the development corporation of which it is a member, and while owners of such shares to exercise all rights, powers and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory agency of this state; provided that the amount of the capital stock of any development corporation which may be acquired by any member pursuant to the authority granted herein shall not exceed ten percent of the loan limit of such member. The amount of capital stock of a development corporation which any member is authorized to acquire pursuant to the authority granted herein is in addition to the amount of capital stock in other corporations which such member may otherwise be authorized to acquire.

2001 Acts, ch 24, §64
Subsection 1 amended

496B.11 Powers of shareholders.

The shareholders and the members of the development corporation shall have the following powers of such corporation:

1. Those powers granted in the Iowa business corporation Act, chapter 490, which are not inconsistent with the provisions of this chapter.

2. To determine the number and elect directors as provided herein.

3. To amend the articles of incorporation as provided herein.

4. To dissolve the corporation as provided herein.

5. To exercise such other of the powers of the corporation as may be conferred on the shareholders and the members by the bylaws. As to all matters requiring action by the shareholders and the members of the corporation, such shareholders and such members shall vote separately thereon by classes and, except as may be otherwise herein provided, approval of such matters shall require the affirmative vote of a majority of the votes to which the shareholders present or represented at the meeting are entitled, and the affirmative vote of a majority of the votes to which the members present or represented at the meeting are entitled. Each shareholder shall have one vote, in person or by proxy, for each share of capital stock held by the shareholder, and each member shall have one vote, in person or by proxy, except that any member having a loan limit of more than one thousand dollars shall have one additional vote, in person or by proxy, for each additional one thousand dollars which such member is authorized to have outstanding on loans to the corporation at any one time as determined herein.

2001 Acts, ch 24, §62
Subsection 1 amended

496B.12 Articles amended.

The articles of incorporation of any development corporation may be amended by the votes of the shareholders and the members thereof voting separately by classes. Any amendment shall require approval by the affirmative vote of two-thirds of the votes to which the shareholders shall be entitled and two-thirds of the votes to which the members shall be entitled. No amendment, however, shall be made which: (1) is inconsistent with this chapter; (2) authorizes any additional class or classes of shares of capital stock; (3) eliminates or curtails the authority of the department with respect to the corporation. Without the consent of each of the members affected, no amendment shall be made which: (1) increases the obligation of a member to make loans to the corporation; (2) makes any change in the principal amount, interest rate, maturity date, or in the security or

credit position of any outstanding loan of a member to the corporation; (3) affects a member's right to withdraw from membership, as provided herein, or (4) affects a member's voting rights in the corporation. Within thirty days after any meeting at which amendment of any such articles has been adopted, articles of amendment signed and sworn to by the president, secretary, and majority of the directors, setting forth such amendment and the due adoption thereof, shall be submitted to the director of the department who shall examine them, and if the director finds that they conform to the requirements of this chapter, shall so certify and endorse the director's approval thereof. Thereupon, the articles of amendment shall be filed in the office of the secretary of state in the manner set forth and as provided in the Iowa business corporation Act, chapter 490, and no such amendment shall take effect until such articles of amendment shall have been approved and filed as aforesaid. Within sixty days after the effective date of any legislative amendment affecting the rights and obligations of the members and shareholders or otherwise affecting the articles of incorporation, the approval of such legislative amendments shall be voted on by the shareholders and the members of the development corporation at a meeting duly called for that purpose. If such legislative amendment is not approved by the affirma-

tive vote of two-thirds of the votes to which such shareholders shall be entitled and two-thirds of the votes to which such members shall be entitled, any such member voting against the approval of such legislative amendment shall have the right to withdraw from membership as provided in this chapter. Within thirty days after any meeting at which a legislative amendment affecting the articles of incorporation of a development corporation has been voted on, a certificate filed and sworn to by the secretary or other recording officer of such corporation setting forth the action taken at such meeting with respect to such amendment shall be submitted to the director of the department and upon receipt of such approval shall be filed in the office of the secretary of state.

2001 Acts, ch 24, §62
Section amended

496B.17 Certificate to do business.

Upon the approval of the department as required in this chapter and the issuance of a certificate as provided in the Iowa business corporation Act, chapter 490, a development corporation shall then be authorized to commence business and to issue stock thereof to the extent authorized in its articles of incorporation.

2001 Acts, ch 24, §64
Section amended

CHAPTER 496C

PROFESSIONAL CORPORATIONS

496C.3 Applicability of Iowa business corporation Act.

The Iowa business corporation Act, chapter 490, shall be construed as part of this chapter and shall apply to professional corporations, including, but not limited to, their organization, reports, fees, authority, powers, rights, and the regulation and conduct of their affairs. The provisions of the Iowa business corporation Act, chapter 490, on foreign corporations shall apply to foreign professional corporations. The provisions of this chapter shall prevail over any inconsistent provisions of the Iowa business corporation Act, chapter 490, or any other law.

2001 Acts, ch 24, §62
Section amended

496C.4 Purposes and powers.

A professional corporation shall be organized only for the purpose of engaging in the practice of one specific profession, or two or more specific professions which could lawfully be practiced in combination by a licensed individual or a partnership of licensed individuals, and for the additional purpose of doing all lawful things which may be incidental to or necessary or convenient in connection

with the practice of the profession or professions. The articles of incorporation shall state in substance that the purposes for which the corporation is organized are to engage in the general practice of a specified profession or professions, or one or more specified branches or divisions thereof, and to do all lawful things which may be incidental to or necessary or convenient in connection with the practice of the profession or professions. Each professional corporation, unless otherwise provided in its articles of incorporation or unless expressly prohibited by this chapter, shall have all powers granted to corporations by the Iowa business corporation Act, chapter 490.

2001 Acts, ch 24, §64
Section amended

496C.9 Relationship and liability to persons served.

This chapter does not modify any law applicable to the relationship between an individual practicing a profession and a person receiving professional services, including, but not limited to, any liability arising out of such practice and any law respecting privileged communications.

This chapter does not modify or affect the ethi-

cal standards or standards of conduct of any profession, including, but not limited to, any standards prohibiting or limiting the practice of the profession by a corporation or prohibiting or limiting the practice of two or more professions in combination. All such standards shall apply to the shareholders, directors, officers, employees, and agents through whom a professional corporation practices any profession in this state, to the same extent that the standards apply to an individual practitioner.

Unless otherwise provided in the articles of incorporation, the liability of the shareholders of a professional corporation, as shareholders, shall be limited in the same manner and to the same extent as in the case of a corporation organized under the Iowa business corporation Act, chapter 490.

2001 Acts, ch 24, §64
Unnumbered paragraph 3 amended

496C.14 Required purchase by professional corporation of its own shares.

Notwithstanding any other statute or rule of law, a professional corporation shall purchase its own shares as provided in this section; and the shareholders of a professional corporation and their executors, administrators, legal representatives, and successors in interest shall sell and transfer the shares held by them as provided in this section.

The corporation may validly purchase its own shares even though its net assets are less than its stated capital, or even though by so doing its net assets would be reduced below its stated capital.

Upon the death of a shareholder, the professional corporation shall immediately purchase all shares held by the deceased shareholder.

In order to remain a shareholder of a professional corporation, a shareholder shall at all times be licensed to practice in this state a profession which the corporation is authorized to practice. Whenever any shareholder does not have or ceases to have this qualification, the corporation shall immediately purchase all shares held by that shareholder.

Whenever any person other than the shareholder of record becomes entitled to have shares of a corporation transferred into that person's name or to exercise voting rights, except as a proxy, with respect to shares of the corporation, the corporation shall immediately purchase such shares. Without limiting the generality of the foregoing, this section shall be applicable whether the event occurs as a result of the appointment of a guardian or conservator for a shareholder or the shareholder's property, transfer of shares by operation of law, involuntary transfer of shares, judicial proceedings, execution, levy, bankruptcy proceedings, receivership proceedings, foreclosure or enforcement of a pledge or encumbrance, or any other situation or occurrence. However, this section does not apply to any voluntary transfer of shares as defined in this chapter.

Shares purchased by the corporation under the provisions of this section shall be transferred to the corporation as of the close of business on the date of the death or other event which requires purchase. The shareholder and the shareholder's executors, administrators, legal representatives, or successors in interest shall promptly do all things which may be necessary or convenient to cause transfer to be made as of the transfer date. However, the shares shall promptly be transferred on the stock transfer books of the corporation as of the transfer date, notwithstanding any delay in transferring or surrendering the shares or certificates representing the shares, and the transfer shall be valid and effective for all purposes as of the close of business on the transfer date. The purchase price for such shares shall be paid as provided in this chapter, but the transfer of shares to the corporation as provided in this section shall not be delayed or affected by any delay or default in making payment.

Notwithstanding the foregoing provisions of this section, purchase by the corporation is not required upon the occurrence of any event other than death of a shareholder if the corporation is dissolved within sixty days after the occurrence of the event. The articles of incorporation or bylaws may provide that purchase is not required upon the death of a shareholder if the corporation is dissolved within sixty days after the death.

Unless otherwise provided in the articles of incorporation or bylaws or in an agreement among all shareholders of the professional corporation:

1. The purchase price for shares shall be their book value as of the end of the month immediately preceding the death or other event which requires purchase. Book value shall be determined from the books and records of the professional corporation in accordance with the regular method of accounting used by the corporation, uniformly and consistently applied. Adjustments to book value shall be made, if necessary, to take into account work in process and accounts receivable. Any final determination of book value made in good faith by any independent certified public accountant or firm of certified public accountants employed by the corporation for the purpose shall be conclusive on all persons.

2. The purchase price shall be paid in cash as follows: Upon the death of a shareholder, thirty percent of the purchase price shall be paid within ninety days after death, and the balance shall be paid in three equal annual installments on the first three anniversaries of the death. Upon the happening of any other event referred to in this section, one-tenth of the purchase price shall be paid within ninety days after the date of such event, and the balance shall be paid in three equal annual installments on the first three anniversaries of the date of the event.

3. Interest from the date of death or other event shall be payable annually on principal pay-

ment dates, at the rate of six percent per annum on the unpaid balance of the purchase price.

4. All persons who are shareholders of the professional corporation on the date of death or other event, and their executors, administrators, and legal representatives, shall, to the extent the corporation fails to meet its obligations hereunder, be jointly liable for the payment of the purchase price and interest in proportion to their percentage of ownership of the corporation's shares, disregarding shares of the deceased or withdrawing shareholder.

5. The part of the purchase price remaining unpaid after the initial payment shall be evidenced by a negotiable promissory note, which shall be executed by the corporation and all shareholders liable for payment. Any person liable on the note shall have the right to prepay the note in full or in part at any time.

6. If the person making any payment is not reasonably able to determine which of two or more persons is entitled to receive a payment, or if the payment is payable to a person who is unknown, or who is under disability and there is no person legally competent to receive the payment, or who cannot be found after the exercise of reasonable diligence by the person making the payment, it shall be deposited with the treasurer of state and shall be subject to the provisions of the Iowa business corporation Act, chapter 490, with respect to funds deposited with the treasurer of state upon the voluntary or involuntary dissolution of a corporation.

7. Notwithstanding the provisions of this section, no part of the purchase price shall be required to be paid until the certificates representing such shares have been surrendered to the corporation.

8. Notwithstanding the provisions of this section, payment of any part of the purchase price for shares of a deceased shareholder shall not be required until the executor or administrator of the deceased shareholder provides any indemnity, release, or other document from any taxing authority, which is reasonably necessary to protect the corporation against liability for estate, inheritance, and death taxes.

The articles of incorporation or bylaws or an agreement among all shareholders of a professional corporation may provide for a different purchase price, a different method of determining the purchase price, a different interest rate or no interest, and other terms, conditions, and schedules of payment.

The articles of incorporation or bylaws or an agreement among all shareholders of a professional corporation may provide for the optional or mandatory purchase of its own shares by the corporation in other situations, subject to any applicable law regarding such purchase.

2001 Acts, ch 24, §62
Subsection 6 amended

496C.19 Dissolution or liquidation.

Violation of any provision of this chapter by a professional corporation or any of its shareholders, directors, or officers shall be cause for its involuntary dissolution, or liquidation of its assets and business by the district court, as provided in the Iowa business corporation Act, chapter 490. Upon the death of the last remaining shareholder of a professional corporation, or whenever the last remaining shareholder is not licensed or ceases to be licensed to practice in this state a profession which the corporation is authorized to practice, or whenever any person other than the shareholder of record becomes entitled to have all shares of the last remaining shareholder of the corporation transferred into that person's name or to exercise voting rights, except as a proxy, with respect to such shares, the corporation shall not practice any profession and it shall be promptly dissolved. However, if prior to such dissolution all outstanding shares of the corporation are acquired by one or more persons licensed to practice in this state a profession which the corporation is authorized to practice, the corporation need not be dissolved and may practice the profession as provided in this chapter.

2001 Acts, ch 24, §64
Section amended

496C.20 Foreign professional corporation.

A foreign professional corporation may practice a profession in this state if it complies with the provisions of the Iowa business corporation Act, chapter 490, on foreign corporations. The secretary of state may prescribe forms for such purpose.

A foreign professional corporation may practice a profession in this state only through shareholders, directors, officers, employees, and agents who are licensed to practice the profession in this state. The provisions of this chapter with respect to the practice of a profession by a professional corporation apply to a foreign professional corporation.

The certificate of authority of a foreign professional corporation may be revoked by the secretary of state as provided in the Iowa business corporation Act, chapter 490, if the foreign professional corporation fails to comply with any provision of this chapter.

This chapter shall not be construed to prohibit the practice of a profession in this state by an individual who is a shareholder, director, officer, employee, or agent of a foreign professional corporation if the individual could lawfully practice the profession in this state in the absence of any relationship to a foreign professional corporation. The preceding sentence shall apply regardless of whether or not the foreign professional corporation is authorized to practice a profession in this state.

2001 Acts, ch 24, §62
Section amended

496C.21 Biennial report.

Each biennial report of a professional corporation or foreign professional corporation shall, in addition to the information required by the Iowa business corporation Act, chapter 490, set forth:

1. The name and address of one shareholder.
2. In the case of a professional corporation, a statement under oath whether or not all shareholders, directors, and officers, except assistant officers, of the corporation are licensed to practice in this state a profession which the corporation is authorized to practice, and whether or not all employees and agents of the corporation who practice a profession in this state on behalf of the corporation are licensed to practice the profession in this state.
3. In the case of a foreign professional corporation, a statement under oath whether or not all shareholders, directors, officers, employees, and agents who practice a profession in this state on behalf of the corporation are licensed to practice the profession in this state.
4. Additional information necessary or appropriate to enable the secretary of state or regulating board to determine whether the professional corporation or foreign professional corporation is complying with this chapter.

Information shall be set forth on forms prescribed and furnished by the secretary of state.

A corporation subject to the provisions of this chapter shall pay the biennial filing fee and make the biennial report in a form and manner and at the time specified in chapter 490.

2001 Acts, ch 24, §64
Unnumbered paragraph 1 amended

496C.22 Corporations organized under other laws.

This chapter shall not apply to or interfere with the practice of any profession by or through any corporation hereafter organized under any other law of this state or any other state or country if such practice is lawful under any other statute or rule of law of this state.

Any corporation subject to the provisions of the Iowa business corporation Act, chapter 490, may voluntarily elect to adopt this chapter and become subject to its provisions by amending its articles of incorporation to be consistent with all provisions of this chapter and by stating in its amended articles of incorporation that the corporation has voluntarily elected to adopt this chapter.

Any corporation organized under any law of any other state or country may become subject to the provisions of this chapter by complying with all provisions of this chapter with respect to foreign professional corporations.

2001 Acts, ch 24, §62
Section amended

CHAPTER 499**COOPERATIVE ASSOCIATIONS****499.3 Dealing with nonmembers.**

A nonstock livestock shipping association shall not handle livestock of any nonmembers.

Any association may restrict the amount of business done with nonmembers and may limit its dealings or any class thereof to members only.

2001 Acts, ch 12, §1, 6
Section amended

499.4 Use of term “cooperative” restricted.

No person or firm, and no corporation hereafter organized, which is not an association as defined in this chapter or a cooperative as defined in chapter 501, shall use the word “cooperative” or any abbreviation thereof in its name or advertising or in any connection with its business, except foreign associations admitted under section 499.54. The attorney general or any association or any member thereof may sue and enjoin such use.

This chapter does not control the use of fictitious names; however, if a cooperative association or a foreign cooperative association uses a fictitious name in this state, it shall deliver to the secretary of state for filing a copy of the resolution of its

board of directors, certified by its secretary, adopting the fictitious name.

2001 Acts, ch 12, §2, 6
NEW unnumbered paragraph 2

499.14 Membership in nonstock associations.

Membership in associations without capital stock may be acquired by eligible parties in the manner provided in the articles, which shall specify the rights of members, the issuing price of memberships, if any, and what, if any, fixed dividends accrue thereon. If the articles so provide, membership shall be of two classes, voting and nonvoting. Voting members shall be agricultural producers, and all other members shall be nonvoting members. Nonvoting members shall have all the rights of membership except the right to vote.

2001 Acts, ch 12, §3, 6
Section amended

499.14A Electric cooperative association memberships.

An electric cooperative association may have one or more classes of members. Qualifications, requirements, methods of acceptance, terms, con-

ditions, termination, and other incidents of membership shall be set forth in the articles of incorporation of the association.

2001 Acts, ch 12, §4, 6
Section amended

499.16 Subscriptions — issuing certificates.

If permitted by the association's articles of incorporation, any eligible subscriber for common stock or membership may vote and be treated as a member after making part payment of the amount, if any, required to be paid for the common stock or membership in cash, giving the subscriber's note for the balance, and satisfying any other requirement for the subscription as set forth in the articles. A subscription may be forfeited as provided in section 499.32. Stock or a membership certificate shall not be issued until payment of the amount, if any, required to be paid for the stock or membership certificate is fully made. A subscriber shall not hold office until the subscriber's certificate has been issued.

2001 Acts, ch 12, §5, 6
Section amended

499.30A Reversion of disbursements.

1. As used in this section, "*disbursement*" means an amount of any dividend, patronage dividend, distribution including earnings distribution, or any other increment or sum realized or accruing from a membership or stock, subscription, or other equity interest in a cooperative association.

2. Once a person's membership or stock, subscription, or other member's equity in a cooperative association is deemed abandoned under section 556.5, the cooperative association may retain any disbursement held by the cooperative association for or owing to the person. The cooperative association may also deliver the disbursement to the treasurer of state for disposition as abandoned property pursuant to sections 556.5 and 556.11.

3. If the cooperative association elects to retain the disbursement under this section, the disbursement shall be deposited into a reversion fund established by the cooperative association.

4. Any disbursement that is retained by the cooperative association shall be forfeited to the cooperative association if the cooperative association publishes at least one notice of the abandoned property in a publication regularly distributed to its membership or in a newspaper having a general circulation in the county where the cooperative

association is located. The notice shall include all of the following:

a. The name and address of the cooperative association.

b. The name of the person who has an interest in the disbursement according to the records of the cooperative association.

c. A brief description of the type of disbursement retained by the cooperative association.

d. A statement that the disbursement will be forfeited to the cooperative association unless the person files a claim for the disbursement within the period provided for in this section.

5. *a.* Subject to this subsection, a person asserting an interest in the disbursement may file a claim for it with the cooperative association in a manner and according to procedures required by the cooperative association. If a person is entitled to an abandoned membership, stock, subscription, or other interest as provided in section 556.20 or 556.21, the cooperative association shall also pay the person the disbursement deposited in the reversion fund that is realized or accrued from the membership or stock, subscription, or other interest.

b. If a person has not filed a claim for the disbursement within six months after the first date that the notice of abandoned property is first published as provided in this section, the disbursement shall be forfeited to the cooperative association.

6. The disbursements deposited into the reversion fund that are forfeited to the cooperative association shall be used as provided in this subsection. The cooperative association may authorize the payment of forfeited disbursements to persons claiming interests in forfeited disbursements as provided in the cooperative association's articles of incorporation or bylaws. Otherwise, forfeited disbursements shall be used as the directors deem suitable for any of the following purposes:

a. Teaching and promoting cooperation. The directors may deposit the amounts of disbursements into the education fund as provided in section 499.30.

b. Economic development including private or joint public and private investments involving the creation of economic opportunities for its members or the retention of existing sources of income that would otherwise be lost.

2001 Acts, ch 142, §3
NEW section

CHAPTER 499A

MULTIPLE HOUSING

499A.104 Sweat equity housing cooperative association.

1. The local housing authority may form one or

more sweat equity housing cooperative associations under this chapter. A sweat equity housing cooperative association shall operate as a multiple

housing cooperative association under subchapter I, except as specifically provided otherwise under this subchapter.

2. A sweat equity housing cooperative association shall meet the following additional conditions:

a. A sweat equity partners' committee shall be established, with each partner entitled to one vote on the committee.

b. The sweat equity committee shall hold twenty-five percent of the stock of the association upon incorporation of the association.

c. An advisory committee shall be established, made up of equity investors, skill contributors, and other community representatives including, but not limited to:

(1) Tradesperson volunteers.

(2) Community college trade representatives and business educators.

(3) Financial and legal advisors to association management.

d. The advisory committee shall hold seventy-five percent of the stock of the association upon incorporation of the association.

3. The association shall be controlled by the board of directors, with representation of partners and advisors on the board proportional to each group's equity interest at the time of the last election of directors to the board.

4. An association shall do all of the following:

a. Acquire existing housing or small business building stock in need of rehabilitation.

b. Establish a rehabilitation plan, which shall include, but not be limited to, all of the following elements:

(1) Statement of purpose.

(2) Financial plan.

(3) Construction timetable.

(4) Materials schedule.

(5) Construction training program schedule for partners. If a contract is executed with a person to perform skilled labor or to supervise skilled work, the person must be certified by an organization recognized as representing a membership of persons with common skills.

(6) Financial and managerial training program for partners.

(7) Bylaws of the association.

(8) A contract between the partners and advisors including the terms of transfer of stock from the advisory committee to the partners' committee.

c. Establish a program to ensure that partners are equipped with skills necessary for full participation in society.

d. Encourage participation by partners in the activities of the community.

2001 Acts, ch 61, §17

Subsection 4, paragraph b, subparagraph (5) amended

CHAPTER 499B

HORIZONTAL PROPERTY (CONDOMINIUMS)

499B.11 Real property tax and special assessments — levy on each apartment.

1. All real property taxes and special assessments shall be assessed and levied on each apartment and its respective appurtenant fractional share or percentage of the land, general common elements and limited common elements where applicable as these apartments and appurtenances are separately owned, and not on the entire horizontal property regime. The fair market value de-

termined for an apartment includes the value of its appurtenant share or percentage of the land, general common elements, and limited common elements.

2. Any exemption from taxes that may exist on real property or the ownership thereof shall not be denied by virtue of the registration of the property under the provisions of this chapter.

2001 Acts, ch 116, §26

Subsection 2 stricken and former subsection 3 renumbered as 2

CHAPTER 502

UNIFORM SECURITIES ACT (Blue Sky Law)

502.102 Definitions.

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

1. "*Administrator*" means the commissioner of insurance or the deputy appointed pursuant to section 502.601.

2. An "*affiliate*" of, or a person "*affiliated*" with, a specified person, means a person who directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the person specified.

3. "*Agent*" means any individual other than a

broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. "Agent" does not include an individual who represents:

a. An issuer in doing any of the following:

(1) Effecting transactions in a security exempted by section 502.202, subsection 1, 2, 3, 4, 6, 10, 11, 12, 13, or 16, or a security issued by an industrial loan company licensed under chapter 536A.

(2) Effecting transactions exempted by section 502.203.

(3) Effecting transactions in a federal covered security as described in sections 18(b)(3) and 18(b)(4)(D) of the Securities Act of 1933 as amended in Pub. L. No. 104-290, if a commission or other remuneration is not either directly or indirectly paid any person for soliciting in this state.

(4) Effecting transactions with an existing employee, member, manager, partner, or director of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state.

b. A broker-dealer in effecting a transaction in this state which is limited to a transaction provided in section 15(h)(2) of the Securities Exchange Act of 1934.

"Agent" also does not include any other individual who is not within the intent of this subsection whom the administrator by rule or order designates. A partner, member, manager, officer, or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if such person otherwise comes within this definition.

4. "Agricultural cooperative association" means any one of the following:

a. An association of persons organized pursuant to chapter 497 for purposes of conducting an agricultural or dairy business on a cooperative plan, as described in section 497.1.

b. A cooperative association organized pursuant to chapter 498 for purposes of conducting an agricultural, livestock, horticultural, or dairy business on a cooperative plan and acting as a cooperative selling agency, as described in section 498.2.

c. An agricultural association as defined in section 499.2, and organized pursuant to chapter 499.

d. Any other entity which is organized on a cooperative basis under the laws of this state for the purpose of engaging in the activities of an agricultural association as defined in section 499.2.

5. "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for such person's own account. "Broker-dealer" does not include:

a. An agent;

b. An issuer;

c. A bank when acting on its own account or when exercising trust or fiduciary powers per-

mitted for banks under applicable state or federal laws and regulations providing for the organization, operation, supervision, and examination of such banks;

d. An insurance company which effects transactions in its own accounts;

e. Other persons not within the intent of this subsection whom the administrator by rule or order designates.

6. "Federal covered adviser" means a person who is registered under section 203 of the Investment Advisers Act of 1940, 15 U.S.C. § 80(b) et seq. "Federal covered adviser" does not include a person who is excluded from the definition of "investment adviser" as provided in subsection 11, paragraph "c", subparagraphs (1) through (7).

7. "Federal covered security" means any security that is a covered security under section 18(b) of the Securities Act of 1933 or rules or regulations adopted under the Securities Act of 1933.

8. "Fraud", "deceit" and "defraud" are not limited to common law deceit.

9. "Guaranteed" means guaranteed as to payment of principal, interest or dividends.

10. "Interest at the legal rate" means the interest rate for judgments specified in section 535.3.

11. a. "Investment adviser" means any person who, for compensation, does any of the following:

(1) Engages in the business of providing investment advisory services by advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities.

(2) As a part of a regular business, issues or promulgates analyses or reports concerning securities.

b. "Investment adviser" includes a financial planner or other person who, as an integral component of other financially related services, does either of the following:

(1) Provides investment advisory services to others for compensation and as part of a business.

(2) Holds oneself out as providing investment advisory services to others for compensation.

c. "Investment adviser" does not include a person who is any of the following:

(1) An investment adviser representative.

(2) A bank, savings institution, or trust company.

(3) An attorney licensed to practice law in this state, a certified public accountant licensed pursuant to chapter 542C, a professional engineer licensed pursuant to chapter 542B, or a certified teacher, if the person's performance of these services is solely incidental to the practice of the person's profession.

(4) An attorney licensed to practice law in this state or a certified public accountant licensed pursuant to chapter 542C who does not do any of the following:

(a) Exercise investment discretion regarding

the assets of a client or maintain custody of the assets of a client for the purpose of investing the assets, except when the person is acting as a bona fide fiduciary in a capacity such as an executor, administrator, trustee, estate or trust agent, guardian, or conservator.

(b) Accept or receive directly or indirectly any commission, fee, or other remuneration contingent upon the purchase or sale of any specific security by a client of such person.

(c) Provide advice regarding the purchase or sale of specific securities. However, this subparagraph subdivision (c) shall not apply when the advice about specific securities is based on a financial statement analysis or tax considerations that are reasonably related to and in connection with the person's profession.

(5) A broker-dealer or its agent whose performance of these services is solely incidental to the conduct of its business as a broker-dealer and who receives no special compensation for them.

(6) A publisher of any bona fide newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form, or by electronic means, or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client.

(7) A person who is excluded from the definition of "investment adviser" under section 202(a)(11) of the Investment Advisers Act of 1940.

(8) A person who is a federal covered adviser.

(9) A person not within the intent of this subsection as the administrator may by rule or order designate.

d. As used in this subsection, "compensation" does not include a commission, fee, or a combination of a commission and a fee, which is paid to an insurance producer licensed under chapter 522B, if the insurance producer receives the commission, fee, or the combination of a commission and a fee, for the sale of insurance as regulated pursuant to Title XIII, subtitle 1.

12. *a.* "Investment adviser representative" means an individual including but not limited to a partner, officer, director, or an individual occupying a similar status or performing similar functions as a partner, officer, or director, except clerical or ministerial personnel, if both of the following apply:

(1) The individual is employed by or associated with an investment adviser that is registered or required to be registered under this chapter, or who is employed by or associated with a federal covered adviser.

(2) The individual does any of the following:

(a) Makes any recommendations or otherwise renders advice regarding securities.

(b) Manages accounts or portfolios of clients.

(c) Determines which recommendation or advice regarding securities should be given.

(d) Solicits, offers, or negotiates for the sale of

or sells investment advisory services.

(e) Supervises employees who perform any of the functions in subparagraphs (a) through (d).

b. "Investment adviser representative" does not include any other person not within the intent of this subsection as the administrator may by rule or order designate.

13. "Issuer" means any person who issues or proposes to issue any security, except that

a. With respect to certificates of deposit, voting trust certificates, or collateral trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or persons performing similar functions or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued; and

b. With respect to a fractional undivided interest in an oil, gas, or other mineral lease or in payments out of production under a lease, right, or royalty, the term "issuer" means the owner of an interest in the lease or payments out of production under a lease, right, or royalty, whether whole or fractional, who creates fractional interests for the purpose of sale.

c. With respect to a viatical settlement contract, "issuer" means a person involved in creating, transferring, or selling to an investor any interest in such a contract, including but not limited to fractional or pooled interests, but does not include an agent or a broker-dealer.

14. "Nonissuer" means not directly or indirectly for the benefit of the issuer.

15. "Person" means an individual, a corporation, a limited liability company, a partnership, an association, a joint stock company, a trust, a fiduciary, an unincorporated organization, a government, or a political subdivision of a government.

16. *a.* "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition or exchange of, a security or interest in a security for value.

b. "Offer" or "offer to sell" includes every attempt or offer to exchange or dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

c. A security given or delivered with, or as a bonus on account of, a purchase of a security or any other thing is offered and sold for value as part of the subject of the purchase.

d. A purported gift of assessable stock is considered to involve an offer and sale.

e. Except to the extent that the administrator provides otherwise by rule or order, an offer or sale of a security that is convertible into or entitles its holder to acquire another security of the same or another issuer is an offer also of the other security, whether the right to convert or acquire is exercis-

able immediately or in the future.

f. The terms defined in this subsection do not include:

(1) Any bona fide pledge or loan; or

(2) Any stock split, other than a reverse stock split, or security dividend payable with respect to the securities of a corporation in the same or any other class of securities of such corporation, provided nothing of value, including the surrender of a right or an option to receive a cash or property dividend, is given by security holders for the security dividend.

17. “*Securities Act of 1933*”, “*Securities Exchange Act of 1934*”, “*Public Utility Holding Company Act of 1935*”, “*Investment Advisers Act of 1940*”, “*Investment Company Act of 1940*”, “*Internal Revenue Code*”, and “*Agricultural Marketing Act*” mean the federal statutes of those names.

18. “*Securities and exchange commission*” means the United States securities and exchange commission as established pursuant to 15 U.S.C. § 78(d).

19. “*Security*” means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; viatical settlement contract, or any fractional or pooled interest in such contract; voting trust certificate; certificate of deposit for a security; fractional undivided interest in an oil, gas, or other mineral lease or in payments out of production under such a lease, right, or royalty; an interest in a limited liability company or in a limited liability partnership or any class or series of such interest, including any fractional or other interest in such interest; or, in general, any interest or instrument commonly known as a “*security*”, or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. “*Security*” does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or for some other specified period. “*Security*” also does not include an interest in a limited liability company or a limited liability partnership if the person claiming that such an interest is not a security proves that all of the members of the limited liability company or limited liability partnership are actively engaged in the management of the limited liability company or limited liability partnership; provided that the evidence that members vote or have the right to vote, or the right to information concerning the business and affairs of the limited liability company or limited liability partnership, or the right to participate in management, shall not establish, without more, that all members are actively engaged in the management of the limited liability company or limited liability

partnership. “*Security*” is any of the foregoing as provided in this subsection whether or not it is evidenced by a written instrument.

20. “*State*” means any state, territory or possession of the United States, the District of Columbia and Puerto Rico.

21. “*Viatical settlement contract*” means an agreement for the purchase, sale, assignment, transfer, devise, or bequest of any portion of the death benefit or ownership of a life insurance policy or contract, for consideration which is less than the expected death benefit of the life insurance policy or contract.

22. For the purposes of sections 502.211 through 502.218, unless the context otherwise requires:

a. “*Associate*” means a person acting jointly or in concert with another for the purpose of acquiring, holding or disposing of, or exercising any voting rights attached to the equity securities of a target company.

b. “*Beneficial owner*” includes, but is not limited to, any person who directly or indirectly, through any contract, arrangement, understanding, or relationship, has or shares the power to vote or direct the voting of a security or has or shares the power to dispose of or otherwise direct the disposition of the security. A person is the beneficial owner of securities beneficially owned by any relative or spouse or relative of the spouse residing in the home of the person, any trust or estate in which the person owns ten percent or more of the total beneficial interest or serves as trustee or executor, any corporation or entity in which the person owns ten percent or more of the equity, and any affiliate or associate of the person.

c. “*Beneficial ownership*” includes, but is not limited to, the right, exercisable within sixty days, to acquire securities through the exercise of options, warrants, or rights or the conversion of convertible securities. The securities subject to these options, warrants, rights, or conversion privileges held by a person are outstanding for the purpose of computing the percentage of outstanding securities of the class owned by the person, but are not outstanding for the purpose of computing the percentage of the class owned by any other person.

d. “*Equity security*” means any stock or similar security, and includes the following:

(1) Any security convertible, with or without consideration, into a stock or similar security.

(2) Any warrant or right to subscribe to or purchase a stock of similar security.

(3) Any security carrying a warrant or right to subscribe to or purchase a stock or similar security.

(4) Any other security which the administrator deems to be of a similar nature and considers necessary or appropriate, according to rules prescribed by the administrator for the public interest and protection of investors, to be treated as an equity security.

e. “*Offeree*” means the beneficial owner, who is a resident of this state, of equity securities which an offeror offers to acquire in connection with a takeover offer.

f. “*Offeror*” means a person who makes or in any manner participates in making a takeover offer. It does not include a supervised financial institution or broker-dealer loaning funds to an offeror in the ordinary course of its business, or any supervised financial institution, broker-dealer, attorney, accountant, consultant, employee, or other person furnishing information or advice to or performing ministerial duties for an offeror, and who does not otherwise participate in the takeover offer.

g. “*Takeover offer*”:

(1) Means the offer to acquire any equity securities of a target company from a resident of this state pursuant to a tender offer or request or invitation for tenders, if after the acquisition of all securities acquired pursuant to the offer either of the following are true:

(a) The offeror would be directly or indirectly a beneficial owner of more than ten percent of any class of the outstanding equity securities of the target company.

(b) The beneficial ownership by the offeror of any class of the outstanding equity securities of the target company would be increased by more than five percent. However, this provision does not apply if after the acquisition of all securities acquired pursuant to the offer, the offeror would not be directly or indirectly a beneficial owner of more than ten percent of any class of the outstanding equity securities of the target company.

(2) Does not include the following:

(a) An offer in connection with the acquisition of a security which, together with all other acquisitions by the offeror of securities of the same class of equity securities of the target company, would not result in the offeror having acquired more than two percent of this class of securities during the preceding twelve-month period.

(b) An offer by the target company to acquire its own equity securities if such offer is subject to section 13(e) of the Securities Exchange Act of 1934.

(c) An offer in which the target company is an insurance company or insurance holding company subject to regulation by the commissioner of insurance, a financial institution subject to regulation by the superintendent of banking or the superintendent of savings and loan associations, or a public utility subject to regulation by the utilities division of the department of commerce.

h. “*Target company*” means an issuer of publicly traded equity securities which has at least twenty percent of its equity securities beneficially held by residents of this state and has substantial assets in this state. For the purposes of this chapter, an equity security is publicly traded if a trading market exists for the security. A trading mar-

ket exists if the security is traded on a national securities exchange, whether or not registered pursuant to the Securities Exchange Act of 1934, or on the over-the-counter market.

2001 Acts, ch 16, §5, 37; 2001 Acts, ch 118, §1, 2
2001 amendment to subsection 11, paragraph d, takes effect January 1, 2002; 2001 Acts, ch 16, §37

For future amendment to subsection 11, paragraph c, subparagraphs (3) and (4), effective July 1, 2002, see 2001 Acts, ch 55, §31, 38

Subsection 3, paragraph a, subparagraph (3) amended

Subsection 11, paragraph d amended

Subsection 19 amended

502.203 Exempt transactions.

The following transactions are exempted from sections 502.201 and 502.602:

1. Any isolated nonissuer transaction, whether effected through a broker-dealer or not.

2. Any nonissuer distribution of an outstanding security if:

a. A recognized securities manual approved by the administrator contains the names of the issuer’s officers and directors, a balance sheet of the issuer as of a date within eighteen months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations;

b. The security was issued by an issuer which has a class of securities subject to registration under section 12 of the Securities Exchange Act of 1934, and has been subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934 for not less than ninety days before the transaction;

c. The security was issued by an issuer which has had or currently has a class of securities registered under this chapter, or under chapter 502 of the Code as it existed prior to January 1, 1976; or

d. The security was issued by an issuer which is registered under the Investment Company Act of 1940.

3. Any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy; but the administrator may by rule require that the customer acknowledge that the sale was unsolicited in accordance with provisions of such rule.

4. Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters.

5. A sale of bonds or notes directly secured by a real estate mortgage, security interest, deed of trust, or agreement for the sale of real estate or chattels, if the entire mortgage, security interest, deed of trust, or agreement, together with all the bonds or notes secured thereby, is offered and sold as a unit; provided that the entire mortgage, security interest, deed of trust or agreement, together with all of the bonds or notes secured thereby, shall not be deemed to be sold as a unit if:

a. Such bonds or notes are part of a single issue including other bonds or notes secured by interests in real estate or chattels owned or developed by the same person or by persons affiliated with

such person; or

b. Such bonds or notes are offered or sold with any right to have substitution by or recourse against, or with guarantee by, the real estate developer or any person other than the person primarily obligated on the bond or note.

6. Any judicial sale or any transaction executed by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, custodian or conservator without any purpose of evading this chapter.

7. Any transaction executed by a bona fide pledgee without any purpose of evading this chapter.

8. An offer or sale to a bank, savings and loan association, credit union, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in a fiduciary capacity. However, the administrator, by rule or order, may grant this exemption to a person or class of persons based upon the factors of financial sophistication, net worth, and the amount of assets under investment.

9. The sale, as part of a single issue, of securities by the issuer of the securities if all of the following conditions are satisfied:

a. Within any period of twelve consecutive months, sales are made to less than thirty-six purchasers in this state, exclusive of purchases by bona fide institutional investors for their own account for investment.

b. Unless permitted by the administrator by rule, or by order issued upon written application showing good cause for the allowance of the sale, the issue is not an issue of:

(1) Fractional undivided interests in oil, gas, or other mineral leases, rights, or royalties.

(2) Interests in a partnership organized under the laws of or having its principal place of business in a foreign jurisdiction.

c. The issuer reasonably believes that all the buyers in this state are purchasing for investment.

d. Commission or other remuneration is not paid or given, directly or indirectly, for the sale, except as may be permitted by the administrator by rule, or by order issued upon written application showing good cause for allowance of commission or other remuneration.

e. The issuer or a person acting on behalf of the issuer does not offer or sell the securities by any form of general solicitation or advertising.

10. Any offer or sale of a preorganization certificate or subscription if:

a. No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber;

b. The number of subscribers does not exceed ten;

c. No payment is made by any subscriber; and
d. No public advertisement of the offer is made.

11. Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants, exercisable within not more than ninety days of their issuance, if:

a. A commission or other remuneration (other than a standby commission) is not paid or given directly or indirectly for soliciting a security holder in this state; or

b. The issuer first files a notice specifying the terms of the offer and the administrator does not by order disallow the exemption within the next ten days.

12. An offer, but not a sale, of a security for which a registration statement has been filed under this chapter or a written notice has been filed pursuant to section 502.202, subsection 1, 9, or 11 if no stop order or suspension or denial order is in effect and no proceeding is pending under this chapter.

13. Any transaction incident to a vote by security holders of a person or incident to a written consent or resolution of some or all security holders of a person, pursuant to the articles of incorporation of such person, or pursuant to the applicable corporate statute or other statute governing such person, or pursuant to such person's partnership agreement, declaration of trust, or trust indenture, or pursuant to any agreement among security holders of such person, on a reclassification of securities, reverse stock split, reorganization involving the exchange of securities, merger, consolidation, or sale of assets, in consideration, in whole or in part, of the issuance of securities of such person or of any other person, if:

a. The securities to be distributed are registered under the Securities Act of 1933 before the consummation of the transaction; or

b. The securities to be distributed are not required to be registered under the Securities Act of 1933, written notice of the transaction, a filing fee of fifty dollars, and a copy of the materials by which approval of the transaction will be solicited, are given to the administrator at least ten days before the consummation of the transaction, and the administrator does not disallow, by order, the exemption within the next ten days.

14. Any transaction incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims or property interests, or partly in such exchange and partly for cash.

15. The distribution of securities as a dividend, where the corporation distributing the dividend is the issuer of the securities distributed, if the only value given by shareholders for the dividend is the surrender of a right to a cash or property dividend when each shareholder may elect to

take the dividend.

- a. In cash or property, or
- b. In such securities.

16. The administrator may create by rule a limited offering transactional exemption which furthers the objectives of compatibility with federal exemptions and uniformity among the states and provides criteria to determine and assure the suitability of investors.

17. The offer or sale of securities by a small business investment company under the federal Small Business Investment Act of 1958 if:

a. The securities are offered or sold in compliance with 17 C.F.R. § 230.601 through 230.610a; and

b. The issuer has filed with the administrator the offering document to be used in connection with the offer and sale of the securities not later than the first use of the offering document in this state, the issuer has filed with the administrator a copy of the notification of form "1-E" required by 17 C.F.R. § 230.604 to be filed with the federal securities and exchange commission, and the issuer has paid the administrator a fee of one hundred dollars.

18. An offer or sale of securities which are exempt from registration under 15 U.S.C. § 77a-77aa pursuant to rule 801 or 802 promulgated by the securities and exchange commission as provided in the Securities Act of 1933.

19. Any other security or transaction or offering or class of securities or transactions or offers exempted or requirements for exemption waived, by the administrator by rule or order, from requirements provided in section 502.201 or 502.602.

2001 Acts, ch 118, §3
NEW subsection 18 and former subsection 18 amended and renumbered as 19

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 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. 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 capital 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.

2001 Acts, ch 118, §4
Subsection 7 amended

502.207B Legislative review and oversight. Repealed by 2001 Acts, ch 118, § 58.

502.302 Registration and notice filing procedures.

1. A broker-dealer, agent, investment adviser, or investment adviser representative may obtain an initial or renewal license by filing with the administrator, or person which the administrator by rule assigns as a designee, an application together with a consent to service of process pursuant to section 502.609 and the appropriate filing fee as required in this section. If the application is filed with a designee, the applicant must also pay any reasonable costs charged by the designee. The ap-

plicant may transmit the fee to the administrator through the designee according to rules adopted by the administrator. The application shall contain information the administrator requires by rule concerning the applicant's form and place of organization, proposed method of doing business and financial condition, and the qualifications and experience of the applicant. In the case of a broker-dealer or investment adviser, the application shall include the qualifications and experience of any partner, officer, director or controlling person, any injunction or administrative order or conviction of a misdemeanor involving securities and any conviction of a felony, and any other matters which the administrator determines are relevant to the application. In addition, in the case of an investment adviser, the application shall include any information to be furnished or disseminated to any client or prospective client, and any other information which the administrator determines is relevant to the application. If no denial order is in effect and no proceeding is pending under section 502.304, registration becomes effective at noon of the sixtieth day after a completed application or an amendment completing the application is filed, unless waived by the applicant. The administrator may by rule or order specify an earlier effective date.

2. Except with respect to federal covered advisers whose only clients are those described in section 502.301, subsection 3, paragraph "b", a federal covered adviser shall file with the administrator, prior to acting as a federal covered adviser in this state, such documents as have been filed with the securities and exchange commission as the administrator, by rule or order, may require.

3. Every applicant for initial or renewal registration as a broker-dealer shall pay a filing fee of two hundred dollars. Every applicant for an initial or renewal registration as an investment adviser shall pay a filing fee of one hundred dollars. Every applicant for initial or renewal registration as an agent or investment adviser representative shall pay a filing fee of thirty dollars. However, an investment adviser representative is not required to pay a filing fee if the investment adviser is a sole proprietorship or the substantial equivalent and the investment adviser representative is the same individual as the investment adviser. A filing fee is not refundable. Every person acting as a federal covered adviser in this state, except with respect to federal covered advisers whose only clients are those described in section 502.301, subsection 3, paragraph "b", shall pay an initial and renewal notice filing fee of one hundred dollars.

4. A registered broker-dealer, federal covered adviser, or investment adviser may file an application for registration of a successor, whether or not the successor is then in existence, for the unexpired portion of the year. There shall be no filing fee.

5. The administrator may by rule or order re-

quire a minimum capital for broker-dealers subject to the limitations of section 15 of the Securities Exchange Act of 1934. The administrator by rule or order may also establish minimum financial requirements for investment advisers, subject to the limitations of section 222 of the Investment Advisers Act of 1940, which may include different requirements for those investment advisers who maintain custody of client funds or securities or who have discretionary authority over client funds or securities and those investment advisers who do not.

6. The administrator may by rule or order require investment advisers who have custody of or discretionary authority over client funds or securities to post bonds in amounts as the administrator may prescribe, subject to the limitations of section 222 of the Investment Advisers Act of 1940 and may determine conditions on the bonds. A bond shall not be required of any investment adviser whose minimum financial requirements, which may be defined by rule, exceed the amounts required by the administrator. Every bond shall provide for suit on the bond by the person who has a cause of action under this chapter and, if the administrator by rule or order requires, by any person who has a cause of action not arising under this chapter. Every bond shall provide that a suit shall not be maintained to enforce liability on the bond unless brought within the time limitations of section 502.504.

7. The administrator may by rule or order impose such other conditions in connection with registration under this chapter as are deemed appropriate, in the public interest or for the protection of investors.

2001 Acts, ch 118, §5
Subsections 1 and 3 amended

502.304 Denial, revocation, suspension, and withdrawal of registration.

1. The administrator may by order deny, suspend, or revoke a registration or may censure, impose a civil penalty upon, or bar an applicant, registrant, branch manager, assistant branch manager, supervisor, or any officer, director, partner, or person occupying a similar status or performing similar functions for a registrant. A person barred under this subsection may be prohibited by the administrator from employment with a registered broker-dealer or investment adviser. The administrator may restrict the person barred from engaging in any activity for which registration is required. Any action by the administrator under this subsection may be taken if the order is found to be in the public interest and it is found that the applicant or registrant or, in the case of a broker-dealer or investment adviser, a partner, an officer, or a director, a person occupying a similar status or performing similar functions, or a person directly or indirectly controlling the broker-dealer or investment adviser, or a branch manager, assis-

tant branch manager, or supervisor:

a. Has filed an application for registration which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;

b. Has willfully violated or willfully failed to comply with any provision of this chapter or a predecessor act or any rule or order under this chapter or a predecessor act;

c. Has been convicted within the past ten years of

(1) Any misdemeanor involving a security or any aspect of the securities business, or

(2) Any felony;

d. Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities, insurance, or commodities business;

e. Is the subject of an order of the administrator denying, suspending, or revoking registration as a broker-dealer, agent, investment adviser, investment adviser representative, or insurance producer;

f. Is the subject of an adjudication or order entered after notice and opportunity for hearing, within the past ten years by a securities or commodities agency, an administrator of another state, or a court of competent jurisdiction, that reflects that the person has violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, or the Commodity Exchange Act, a securities or commodities law of any other state, or a United States postal service fraud order. However, the administrator may not do either of the following:

(1) Institute a revocation or suspension proceeding under this paragraph more than one year from the final agency order relied on or, if the order has been appealed, the final court decision.

(2) Enter an order under this paragraph on the basis of an order under another state law unless that order was based on facts which would currently constitute a ground for an order under this section.

g. Has engaged in dishonest or unethical practices in the securities business;

h. Is insolvent, either in the equity or bankruptcy sense; but the administrator may not enter an order against a broker-dealer or investment adviser under this paragraph without a finding of insolvency as to the broker-dealer or investment adviser;

i. Is not qualified on the basis of such factors as training, experience and knowledge of the securities business;

j. Has failed reasonably to supervise an agent or employee in the case of a broker-dealer, or an in-

vestment adviser representative or employee in the case of an investment adviser;

k. Has been denied the right to do business in the securities industry, or the person's authority to do business in the securities industry has been revoked for cause by another state, federal, or foreign governmental agency or by a self-regulatory organization; or

l. Has been the subject of a final order in a criminal, civil, injunctive, or administrative action for securities, commodities, or fraud-related violations of the laws of this state or another state, federal, or foreign governmental unit.

m. Does any of the following:

(1) Has willfully violated the law of a foreign jurisdiction governing or regulating any aspect of the business of securities, insurance, or banking.

(2) Within the past five years, has been the subject of an action of a securities regulator of a foreign jurisdiction denying, revoking, or suspending the right to engage in the business of securities as a broker-dealer, agent, investment adviser, or investment adviser representative.

(3) Is the subject of an action of any securities exchange or self-regulatory organization operating under the authority of the securities regulator of a foreign jurisdiction suspending or expelling such person from membership in such exchange or self-regulatory organization.

n. Does either of the following:

(1) Refuses to allow or otherwise impedes the securities bureau from conducting an audit, examination, inspection, or investigation as provided under section 502.303 or 502.603, including by withholding or concealing records or refusing to furnish records, if the records are required to be kept either under this chapter or under rules adopted under this chapter or by the securities bureau acting under this chapter.

(2) Refuses securities bureau access to any office or location within an office to conduct an audit, examination, inspection, or investigation.

o. Is the subject of a cease and desist order issued by the administrator under section 502.604, another state, or the securities and exchange commission.

2. The administrator may not institute a suspension or revocation proceeding under subsection 1, paragraphs "c" through "f", on the basis of a fact known to the administrator when registration became effective unless the proceeding is instituted within ninety days after the effective date.

3. The administrator may by order summarily postpone or suspend registration pending final determination of any proceeding under this section. Upon the entry of the order, the administrator shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent or investment adviser representative, that it has been entered and of the reasons therefor and that within

fifteen days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the administrator, the order will remain in effect until it is modified or vacated by the administrator. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.

4. *a.* If the administrator finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, agent, investment adviser, or investment adviser representative, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after search, the administrator may by order revoke the registration or application.

b. If the administrator finds that the applicant or registrant for registration has abandoned the application or registration, the administrator may enter an order of abandonment, and limit or eliminate further consideration of the application or registration, as provided by the administrator. The administrator may enter an order under this paragraph if notice is sent to the applicant or registrant, and either the administrator does not receive a response by the applicant or registrant within forty-five days from the date that the notice was delivered, or action is not taken by the applicant or registrant within the time specified by the administrator in the notice, whichever is later.

5. Withdrawal from registration as a broker-dealer, agent, investment adviser, or investment adviser representative becomes effective thirty days after receipt of an application to withdraw or within such shorter period of time as the administrator may by order determine, unless a proceeding to deny, suspend, or revoke a registration is pending when the application is filed or a proceeding to deny, suspend, or revoke a registration, or to impose conditions upon the withdrawal is instituted within thirty days after the application is filed. If a proceeding is pending or instituted, withdrawal becomes effective at such time and upon such conditions as the administrator by order determines. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the administrator may nevertheless institute a revocation or suspension proceeding under subsection 1 within one year after withdrawal became effective and enter a revocation or suspension order as of the last date on which registration was effective.

6. A person who directly or indirectly controls a broker-dealer or agent is subject to the same sanctions applicable to an applicant or registrant under this section, unless the person proves that the person did not know, and was not grossly negligent in failing to know, of the existence of facts by reason of which the liability is alleged to exist.

7. No order may be entered under any part of

this section except the first sentence of subsection 3 without compliance with the Iowa administrative procedure Act.

8. A civil penalty imposed under subsection 1 shall not exceed five thousand dollars per violation per person and shall not exceed five hundred thousand dollars in a single proceeding against any one person. Moneys received from the imposition of civil penalties shall be deposited in the general fund of the state.

2001 Acts, ch 16, §6, 37; 2001 Acts, ch 118, §6 – 8
2001 amendment to subsection 1, paragraph e, takes effect January 1, 2002; 2001 Acts, ch 16, §37
Subsection 1, paragraph e amended
Subsection 1, paragraph m, subparagraph (1) amended
Subsection 1, NEW paragraph o
Subsection 8 amended

502.603 Investigations and subpoenas.

1. The administrator may

a. Make such public or private investigations within or outside of this state as the administrator deems necessary to determine whether any person has violated or is about to violate any provision of this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder;

b. Require or permit any person to file a statement in writing, under oath or otherwise as the administrator determines, as to all the facts and circumstances concerning the matter to be investigated; and

c. Notwithstanding chapter 22, keep confidential the information obtained in the course of an investigation. However, if the administrator determines that it is necessary or appropriate in the public interest or for the protection of investors, the administrator may share information with other securities administrators, regulatory authorities, or governmental agencies or may publish information concerning a violation of this chapter or a rule or order under this chapter.

2. a. For the purpose of any investigation or proceeding under this chapter, the administrator or any officer designated by the administrator may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements or other documents or records which the administrator deems relevant or material to the inquiry, all of which may be enforced in accordance with chapter 17A.

b. The administrator may issue and bring an action in district court to enforce subpoenas in this state at the request of a securities agency or administrator of another state, if the activity constituting an alleged violation for which the information is sought would be a violation of this chapter had the activity occurred in this state.

3. A person is not excused from attending or testifying in a proceeding required by this section, or from producing any evidence, including a docu-

ment or record in obedience to a subpoena of the administrator or any officer designated by the administrator, on the ground that the testimony or evidence required, whether documentary or otherwise, may tend to incriminate such person or subject such person to a penalty or forfeiture. If a person makes a claim against self-incrimination, the administrator may file a petition to compel compliance with this section in the district court for Polk county. The court may make a threshold determination on the applicability of the self-incrimination privilege. Any evidence compelled under order of the district court, or any information directly or indirectly derived from such evidence or other information, shall not be used against the person in any criminal case. The limitation on the use of evidence in a criminal proceeding contained in this section does not apply to any prosecution or proceeding for perjury or contempt of court committed in the course of giving or producing information, documents, testimony, or other evidence.

2001 Acts, ch 118, §9
Subsection 3 stricken and rewritten

502.604 Summary orders — injunctions.

If it appears to the administrator that a person has engaged or is about to engage in an act or practice constituting a violation of this chapter or any rule or order adopted or issued pursuant to this chapter, the administrator may do any of the following:

1. Issue a summary order directed at the person requiring the person to cease and desist from engaging in such act or practice or to take other affirmative action as in the judgment of the administrator is necessary to comply with the requirements of this chapter.

a. If a hearing is not timely requested, the summary order becomes final by operation of law. The order shall remain effective from the date of issuance until the date the order becomes final by operation of law or is overturned by a presiding officer or court following a request for hearing. A person who has been issued a summary order under this subsection may contest the order by filing a request for a contested case proceeding as provided in chapter 17A and in accordance with rules adopted by the administrator. However, the person shall have at least thirty days from the date that the order is issued in order to file the request. Section 17A.18A is inapplicable to a summary order issued under this subsection.

b. A person violating a summary order issued under this subsection shall be deemed in contempt of that order. The administrator may petition the district court to enforce the order as certified by the administrator. The district court shall adjudge the person in contempt of the order if the court finds after hearing that the person is not in compliance with the order. The court shall assess a civil penalty against the person in an amount not less than three thousand dollars but not greater

than ten thousand dollars per violation, and may issue further orders as it deems appropriate.

2. Bring an action in the district court to enjoin the act or practice and to enforce compliance with this chapter or a rule or order adopted or issued pursuant to this chapter. Upon a proper showing, the court may do all of the following:

a. Grant a permanent or temporary injunction, restraining order, asset freeze, accounting, writ of attachment, writ of general or special execution, writ of mandamus, or other equitable or ancillary relief.

b. Appoint a receiver or conservator for the defendant or the defendant's assets.

c. Order the administrator to take charge and control of a party's property, including but not limited to managing rents and profits, collecting debts, and acquiring and disposing of property.

d. Order the rescission, restitution, or disgorgement directed at any person who has engaged in an act constituting a violation of this chapter, or a rule or order adopted or issued pursuant to this chapter.

e. Order the payment of prejudgment and postjudgment interest.

The administrator shall not be required to post a bond.

3. Assess a civil penalty against the person, if the violation was made knowingly or recklessly. The penalty shall be assessed as an agency action provided for under chapter 17A. The amount of the civil penalty shall not exceed five thousand dollars for each violation.

2001 Acts, ch 118, §10, 11
Unnumbered paragraph 1 amended
NEW subsection 3

502.604B Limited law enforcement authority.

The administrator or designee, when carrying

out the provisions of section 502.603, 502.603A, or 502.604, may develop, share, and receive information related to any law enforcement purpose, including any criminal investigation. The administrator or designee shall not have the authority to issue criminal subpoenas or make arrests. The administrator or designee shall not be considered a peace officer, including as provided in chapter 801.

2001 Acts, ch 118, §12
NEW section

502.605 Criminal penalties.

1. *a.* Except as provided in paragraph "b", a person who willfully violates any provision of this chapter, or any rule or order under this chapter, is guilty of a class "D" felony.

b. A person who willfully violates section 502.401, 502.402, or 502.403, or section 502.408, subsection 1 or 2, resulting in a loss of more than ten thousand dollars is guilty of a class "C" felony.

2. The administrator may refer such evidence as is available concerning violations of this chapter or of any rule or order hereunder to the attorney general or the proper county attorney who may, with or without such a reference, institute the appropriate criminal proceedings under this chapter.

3. Nothing in this chapter limits the power of the state to punish any person for any conduct which constitutes a crime under any other statute.

4. In a criminal proceeding brought under this chapter, the applicability of any exemption, exception, exclusion from a definition, or preemption shall be an affirmative defense. The defendant claiming such an exemption, exception, exclusion, or preemption has the burden of going forward with the evidence of the claim.

2001 Acts, ch 118, §13, 14
Subsection 1 amended
NEW subsection 4

CHAPTER 504A

IOWA NONPROFIT CORPORATION ACT

504A.6 Corporate name.

1. A corporate name shall not contain language stating or implying that the corporation is organized for a purpose other than that permitted by its articles of incorporation.

2. Except as authorized by subsections 3 and 4, a corporate name must be distinguishable upon the records of the secretary of state from all of the following:

a. The corporate name of a nonprofit corporation or business corporation incorporated or authorized to conduct affairs or do business in this state.

b. A corporate name reserved under section 504A.7, or reserved or registered under the Iowa

business corporation Act, chapter 490.

c. The fictitious name of a foreign business or nonprofit corporation authorized to transact business or conduct affairs in this state because its real name is unavailable.

3. A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable upon the secretary's records from one or more of the names described in subsection 2. The secretary of state shall authorize use of the name applied for if one of the following conditions applies:

a. The other corporation consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its

name to a name that is distinguishable upon the records of the secretary of state from the name of the applying corporation.

b. The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

4. A corporation may use the name, including the fictitious name, of another domestic or foreign corporation that is used in this state if the other corporation is incorporated or authorized to conduct affairs or transact business in this state and the proposed user corporation meets one of the following conditions:

a. Has merged with the other corporation.

b. Has been formed by reorganization of the other corporation.

c. Has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

5. This chapter does not control the use of fictitious names; however, if a corporation or a foreign corporation uses a fictitious name in this state, it shall deliver to the secretary of state for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

2001 Acts, ch 24, §64

Subsection 2, paragraph b amended

504A.85 Fees for filing documents and issuing certificates.

The secretary of state shall charge and collect for:

1. Filing articles of incorporation and issuing a certificate of incorporation, twenty dollars.

2. Filing statement of election to accept the chapter, five dollars.

3. Filing articles of amendment and issuing a certificate of amendment, ten dollars.

4. Filing restated articles of incorporation, twenty dollars.

5. Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, twenty dollars.

6. Filing an application to reserve a corporate name, ten dollars.

7. Filing a notice of transfer of a reserved corporate name, ten dollars.

8. Filing articles of dissolution, five dollars.

9. Filing an application of a foreign corporation for a certificate of authority to conduct affairs in this state and issuing a certificate of authority, twenty-five dollars.

10. Filing an application of a foreign corporation for an amended certificate of authority to conduct affairs in this state and issuing an amended certificate of authority, twenty-five dollars.

11. Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, five dollars.

12. Filing any other statement or report, except a statement of change of registered office or registered agent, of a domestic or foreign corporation, five dollars.

Authority to refund fees; 2000 Acts, ch 1231, §32; 2001 Acts, ch 187, §26
Section not amended; footnote revised

CHAPTER 505

INSURANCE DIVISION

505.8 General powers and duties.

1. The commissioner of insurance shall be the head of the division, and shall have general control, supervision, and direction over all insurance business transacted in the state, and shall enforce all the laws of the state relating to such insurance.

2. The commissioner shall, subject to chapter 17A, establish, publish, and enforce rules not inconsistent with law for the enforcement of this subtitle and for the enforcement of the laws, the administration and supervision of which are imposed on the division, including rules to establish fees sufficient to administer the laws, where appropriate fees are not otherwise provided for in rule or statute.

3. The commissioner shall supervise all transactions relating to the organization, reorganization, liquidation, and dissolution of domestic insurance corporations, and all transactions leading

up to the organization of such corporations.

4. The commissioner shall also supervise the sale in the state of all stock, certificates, or other evidences of interest, either by domestic or foreign insurance companies or organizations proposing to engage in any insurance business.

5. The commissioner shall supervise all health insurance purchasing cooperatives providing services or operating within the state and the organization of domestic cooperatives. The commissioner may admit nondomestic health insurance purchasing cooperatives under the same standards as domestic cooperatives.

6. The commissioner shall adopt rules protecting the privacy of information held by an insurer or an agent consistent with the federal Gramm-Leach-Bliley Act, Pub. L. No. 106-102.

See also §523A.801

Section not amended; footnote revised

505.11 Refunds.

Whenever it appears to the satisfaction of the commissioner of insurance that because of error, mistake, or erroneous interpretation of statute that a foreign or domestic insurance corporation has paid to the state of Iowa taxes, fines, penalties, or license fees in excess of the amount legally chargeable against it, the commissioner of insur-

ance shall have power to refund to such corporation any such excess by applying the amount of the excess payment toward the payment of taxes, fines, penalties, or license fees already due or which may become due, until such excess payments have been fully refunded.

2001 Acts, ch 69, §2
Section amended

CHAPTER 507**EXAMINATION OF INSURANCE COMPANIES****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. 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 commissioner 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 refiling 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 non-adversarial, 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.

2001 Acts, ch 69, §3
Subsection 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. 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.

8. 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.

9. a. 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:

(1) The arrangement is administered by an authorized insurer or an authorized third-party administrator.

(2) The arrangement has been in existence and provided health insurance in Iowa for at least five years prior to July 1, 1997.

(3) 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 ten continuous years prior to July 1, 1997.

(4) The arrangement registers with and obtains a certificate of registration issued by the commissioner of insurance.

(5) The arrangement is subject to the jurisdiction of the commissioner of insurance, including

regulatory oversight and solvency standards as established by rules adopted by the commissioner of insurance pursuant to chapter 17A.

b. A multiple employer welfare arrangement registered with the commissioner of insurance that does not meet the solvency standards established by rule adopted by the commissioner of insurance is subject to chapter 507C.

c. A multiple employer welfare arrangement that meets all of the conditions of paragraph "a" shall not be considered any of the following:

(1) An insurance company or association of any kind or character under section 432.1.

(2) A member of the Iowa individual health benefit reinsurance association under section 513C.10.

(3) A member insurer of the Iowa life and health insurance guaranty association under section 508C.5, subsection 8.

d. A multiple employer welfare arrangement registered with the commissioner of insurance shall file with the commissioner of insurance on or before March 1 of each year a copy of the report required to be filed with the United States department of labor pursuant to 29 C.F.R. § 2520.101-2.

e. A multiple employer welfare arrangement registered with the commissioner of insurance shall file with the commissioner of insurance on or before March 1 of each year an annual report con-

taining all of the following information regarding the multiple employer welfare arrangement:

(1) The number of participants.

(2) The amount of premium collected.

(3) Those special health and accident coverages under chapter 514C provided by the multiple welfare arrangement.

f. The reports filed by the multiple employer welfare arrangements pursuant to paragraph "e" shall be compiled by the insurance division and filed annually with the general assembly by March 30. The compilation shall include the following information:

(1) A computation of the amount of premium tax that would have been paid by the multiple employer welfare arrangements if the arrangements had been insurance companies.

(2) A computation of the amount that would have been assessed by the Iowa individual health benefit reinsurance association to the multiple employer welfare arrangements if the arrangements had been members of the Iowa individual health benefit reinsurance association.

98 Acts, ch 1012, §1; 2001 Acts, ch 13, §1, 3-5; 2001 Acts, ch 69, §4, 39 Subsection 9, paragraphs e and f, are stricken effective July 1, 2002; 2001 Acts, ch 13, §4, 5

2001 amendment striking subsection 7 takes effect January 1, 2002; 2001 Acts, ch 69, §39

Subsection 7 stricken and former subsections 8-10 renumbered as 7-9

Subsection 9 amended

CHAPTER 507B

INSURANCE TRADE PRACTICES

507B.3 Unfair competition or unfair and deceptive acts or practices prohibited.

A person shall not engage in this state in any trade practice which is defined in this chapter as, or determined pursuant to section 507B.6 to be, an unfair method of competition, or an unfair or deceptive act or practice in the business of insurance. The issuance of a qualified charitable gift annuity as provided in chapter 508F does not constitute a trade practice in violation of this chapter.

The commissioner shall have power to examine and investigate into the affairs of every person engaged in the business of insurance in this state in order to determine whether such person has been or is engaged in any unfair method of competition or in any unfair or deceptive act or practice prohibited by this section.

2001 Acts, ch 28, §1
Unnumbered paragraph 1 amended

507B.4 Unfair methods of competition and unfair or deceptive acts or practices defined.

The following are hereby defined as unfair methods of competition and unfair or deceptive

acts or practices in the business of insurance:

1. *Misrepresentations and false advertising of insurance policies.* Making, issuing, circulating, or causing to be made, issued or circulated, any estimate, illustration, circular, statement, sales presentation, omission, or comparison which does any of the following:

a. Misrepresents the benefits, advantages, conditions, or terms of any insurance policy.

b. Misrepresents the dividends or share of the surplus to be received on any insurance policy.

c. Makes any false or misleading statements as to the dividends or share of surplus previously paid on any insurance policy.

d. Is misleading or is a misrepresentation as to the financial condition of any person, or as to the legal reserve system upon which any life insurer operates.

e. Uses any name or title of any insurance policy or class of insurance policies misrepresenting the true nature thereof.

f. Is a misrepresentation for the purpose of inducing or tending to induce the lapse, forfeiture, exchange, conversion, or surrender of any insurance policy.

g. Is a misrepresentation for the purpose of effecting a pledge or assignment of or effecting a loan against any insurance policy.

h. Misrepresents any insurance policy as being shares of stock.

i. Misrepresents any insurance policy to consumers by using the terms “burial insurance”, “funeral insurance”, “burial plan”, or “funeral plan” in its names or titles, unless the policy is made with a funeral provider as beneficiary who specifies and fixes a price under contract with an insurance company. This paragraph does not prevent insurers from stating or advertising that insurance benefits may provide cash for funeral or burial expenses.

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 otherwise rebating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, provided that any such bonuses or rebatement of premiums shall be fair and equitable to policyholders and for the best interests of

the company and its policyholders.

(2) In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expenses.

(3) Readjustment of the rate of premium for a group insurance policy based on the loss or expense experienced thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year.

9. *Unfair claim settlement practices.* Committing or performing with such frequency as to indicate a general business practice any of the following:

a. Misrepresenting pertinent facts or insurance policy provisions relating to coverages of issue.

b. Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies.

c. Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies.

d. Refusing to pay claims without conducting a reasonable investigation based upon all available information.

e. Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed.

f. Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear, or failing to include interest on the payment of claims when required under subsection 12 or 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.

o. Failing to comply with the procedures for auditing claims submitted by health care providers as set forth by rule of the commissioner. However, this paragraph shall have no applicability to liability insurance, workers' compensation or similar insurance, automobile or homeowners' medical payment insurance, disability income, or long-term care insurance.

10. *Misrepresentation in insurance applications.* Making false or fraudulent statements or representations on or relative to an application for an insurance policy, for the purpose of obtaining a fee, commission, money, or other benefit from any insurer, agent, broker, or individual.

11. *Omission from insurance application.* Failing to designate on an insurance policy application the licensee who has solicited and written the policy.

12. *Payment of interest.* Failure of an insurer to pay interest at the rate of ten percent per annum on all health insurance claims that the insurer fails to timely accept and pay pursuant to section 507B.4A, subsection 2, paragraph "d". Interest shall accrue commencing on the thirty-first day after receipt of all properly completed proof of loss forms.

For purposes of this subsection, "insurer" means an entity providing a plan of health insurance, health care benefits, or health care services, or an entity subject to the jurisdiction of the commissioner performing utilization review, including an insurance company offering sickness and accident plans, a health maintenance organization, an organized delivery system authorized under 1993 Iowa Acts, chapter 158, and licensed by the department of public health, a nonprofit health service corporation, a plan established pursuant to chapter 509A for public employees, or any other entity providing a plan of health insurance, health care benefits, or health care services. However, "insurer" does not include an entity that sells disability income or long-term care insurance.

13. *Rating organizations.* Any violation of section 515F.16.

14. *Minor traffic violations.* Failure of a per-

son to comply with section 516B.3.

2001 Acts, ch 69, § 5 – 7, 39; 2001 Acts, ch 118, §15, 56
 2001 amendment to subsection 9, paragraph f, and new subsection 12 are effective January 1, 2002; 2001 Acts, ch 69, §39; 2001 Acts, ch 118, §56
 Subsection 9, paragraph f amended and NEW paragraph o
 Subsection 10A editorially renumbered as 11
 NEW subsection 12 and former subsections 11 and 12 renumbered as 13 and 14

507B.4A Duty to respond to inquiries and prompt payment of claim.

1. A person shall promptly respond to inquiries from the commissioner.

a. A person's actions are deemed untimely under this subsection if the person fails to respond to an inquiry from the commissioner within thirty days of the receipt of the inquiry, unless good cause exists for delay.

b. Failure to respond to inquiries from the commissioner pursuant to this subsection with such frequency as to indicate a general business practice shall subject the person to penalty under this chapter.

2. *a.* An insurer providing accident and sickness insurance under chapter 509, 514, or 514A; a health maintenance organization; an organized delivery system authorized under 1993 Iowa Acts, chapter 158, and licensed by the department of public health; or another entity providing health insurance or health benefits subject to state insurance regulation shall either accept and pay or deny a clean claim.

b. For purposes of this subsection, "clean claim" means a properly completed paper or electronic billing instrument containing all reasonably necessary information, that does not involve coordination of benefits for third-party liability, preexisting condition investigations, or subrogation, and that does not involve the existence of particular circumstances requiring special treatment that prevents a prompt payment from being made.

c. The commissioner shall adopt rules establishing processes for timely adjudication and payment of claims by insurers for health care benefits. The rules shall be consistent with the time frames and other procedural standards for claims decisions by group health plans established by the United States department of labor pursuant to 29 C.F.R. pt. 2560 in effect on January 1, 2002.

d. Payment of a clean claim shall include interest at the rate of ten percent per annum when an insurer or other entity as defined in this subsection that administers or processes claims on behalf of the insurer or other entity fails to timely pay a claim.

e. This subsection shall not apply to liability insurance, workers' compensation or similar insurance, automobile or homeowners' medical payment insurance, disability income, or long-term care insurance.

2001 Acts, ch 69, § 8, 39; 2001 Acts, ch 176, §71
 Section is effective January 1, 2002; 2001 Acts, ch 69, §39
 NEW section

507B.6 Hearings, witnesses appearances, production of books and service of process.

1. Whenever the commissioner believes that any person has been engaged or is engaging in this state in any unfair method of competition or any unfair or deceptive act or practice whether or not defined in section 507B.4, 507B.4A, or 507B.5 and that a proceeding by the commissioner in respect to such method of competition or unfair or deceptive act or practice would be in the public interest, the commissioner shall issue and serve upon such person a statement of the charges in that respect and a notice of a hearing on such charges to be held at a time and place fixed in the notice, which shall not be less than ten days after the date of the service of such notice.

2. At the time and place fixed for such hearing, such person shall have an opportunity to be heard and to show cause why an order should not be made by the commissioner requiring such person to cease and desist from the acts, methods or practices so complained of. Upon good cause shown, the commissioner shall permit any person to intervene, appear and be heard at such hearing by counsel or in person.

3. Nothing contained in this chapter shall require the observance at any such hearing of formal rules of pleading or evidence.

4. The commissioner, upon such hearing, may administer oaths, examine and cross-examine witnesses, receive oral and documentary evidence, and shall have the power to subpoena witnesses, compel their attendance, and require the production of books, papers, records, correspondence, or other documents which the commissioner deems relevant to the inquiry. The commissioner, upon such hearing, may, and upon the request of any party shall, cause to be made a stenographic record of all the evidence and all the proceedings had at such hearing. If no stenographic record is made and if a judicial review is sought, the commissioner shall prepare a statement of the evidence and proceeding for use on review. In case of a refusal of any person to comply with any subpoena issued hereunder or to testify with respect to any matter concerning which the person may be lawfully interrogated, the district court of Polk county or the county where such party resides, on application of the commissioner, may issue an order requiring such person to comply with such subpoena and to testify; and any failure to obey any such order of the court may be punished by the court as a contempt thereof.

5. Statements of charges, notices, orders, and other processes of the commissioner under this chapter may be served by anyone duly authorized by the commissioner, either in the manner provided by law for service of process in civil actions, or by mailing a copy thereof by restricted certified

mail to the person affected by such statement, notice, order, or other process at the person's residence or principal office or place of business. The verified return by the person so serving such statement, notice, order, or other process, setting forth the manner of such service, shall be proof of the same, and the return receipt for such statement, notice, order or other process, and mailed by restricted certified mail as aforesaid, shall be proof of the service of the same.

2001 Acts, ch 69, §9, 39
2001 amendment to subsection 1 takes effect January 1, 2002; 2001 Acts, ch 69, §39
Subsection 1 amended

507B.7 Cease and desist orders and modifications thereof.

1. If, after such hearing, the commissioner determines that the person charged has engaged in an unfair method of competition or an unfair or deceptive act or practice, the commissioner shall reduce the findings to writing and shall issue and cause to be served upon the person charged with the violation a copy of such findings, an order requiring such person to cease and desist from engaging in such method of competition, act, or practice, and if the act or practice is a violation of section 507B.4, 507B.4A, or 507B.5, the commissioner may at the commissioner's discretion order any one or more of the following:

a. Payment of a civil penalty of not more than one thousand dollars for each act or violation, but not to exceed an aggregate of ten thousand dollars, unless the person knew or reasonably should have known the person was in violation of section 507B.4, 507B.4A, or 507B.5, in which case the penalty shall be not more than five thousand dollars for each act or violation, but not to exceed an aggregate penalty of fifty thousand dollars in any one six-month period. If the commissioner finds that a violation of section 507B.4, 507B.4A, or 507B.5 was directed, encouraged, condoned, ignored, or ratified by the employer of the person or by an insurer, the commissioner shall also assess a fine to the employer or insurer.

b. Suspension or revocation of the license of a person as defined in section 507B.2, subsection 1, if the person knew or reasonably should have known the person was in violation of section

507B.4, 507B.4A, or 507B.5.

c. Payment of interest at the rate of ten percent per annum if the commissioner finds that the insurer failed to pay interest as required under section 507B.4, subsection 12.

2. Until the expiration of the time allowed under section 507B.8 for filing a petition for review if no such petition has been duly filed within such time, or, if a petition for review has been filed within such time, then until the transcript of the record in the proceeding has been filed in the district court, as hereinafter provided, the commissioner may at any time, upon such notice and in such manner as the commissioner may deem proper, modify or set aside in whole or in part any order issued by the commissioner under this section.

3. After the expiration of the time allowed for filing such a petition for review if no such petition has been duly filed within such time, the commissioner may at any time, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part, any order issued by the commissioner under this section, whenever in the commissioner's opinion conditions of fact or of law have so changed as to require such action, or if the public interest shall so require.

2001 Acts, ch 69, §10, 39
2001 amendment to subsection 1 takes effect January 1, 2002; 2001 Acts, ch 69, §39
Subsection 1 amended

507B.12 Rules.

The commissioner may, after notice and hearing, promulgate reasonable rules, as are necessary or proper to identify specific methods of competition or acts or practices which are prohibited by section 507B.4, 507B.4A, or 507B.5, but the rules shall not enlarge upon or extend the provisions of such sections. Such rules shall be subject to review in accordance with chapter 17A.

The powers vested in the commissioner by this chapter shall be additional to any other powers to enforce any penalties, fines or forfeitures authorized by law with respect to the methods, acts and practices hereby declared to be unfair or deceptive.

2001 Acts, ch 69, §11, 39
2001 amendment takes effect January 1, 2002; 2001 Acts, ch 69, §39
Unnumbered paragraph 1 amended

CHAPTER 508A

VARIABLE ANNUITIES AND LIFE INSURANCE

508A.5 Other provisions applicable.

Except for section 508.37 and section 509.2, subsection 1, and except as otherwise provided in this chapter, all pertinent provisions of chapters 508, 509, 511, and 522B shall apply to separate accounts and contracts relating thereto. Any indi-

vidual variable life insurance contract, delivered or issued for delivery in this state, shall contain nonforfeiture provisions appropriate to such a contract. Any group variable life insurance contract, delivered or issued for delivery in this state, shall contain a grace provision appropriate to such

a contract. The reserve liability for variable contracts shall be established in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality

guarantees.

2001 Acts, ch 16, §7, 37

2001 amendment takes effect January 1, 2002; 2001 Acts, ch 16, §37

Section amended

CHAPTER 508F

CHARITABLE GIFT ANNUITIES

508F.1 Definitions.

As used in this chapter, unless the context clearly indicates otherwise:

1. “*Charitable gift annuity*” means a transfer of property by a donor to a charitable organization in return for an annuity payable over one or two lives, if the actuarial value of the annuity is less than the value of the property transferred and the difference in value constitutes a charitable deduction for federal tax purposes.

2. “*Charitable organization*” means an entity described by any of the following:

a. Section 501(c)(3) of the Internal Revenue Code.

b. Section 170(c) of the Internal Revenue Code.

3. “*Commissioner*” means the commissioner of insurance.

4. “*Internal Revenue Code*” means the Internal Revenue Code of 1986 as designated by the Tax Reform Act of 1986, as amended to a date designated by rules adopted by the commissioner.

5. “*Property*” means anything of value that is subject to ownership, and includes but is not limited to property classified as real, personal, mixed, tangible or intangible, or any present or future interest in such property.

6. “*Qualified charitable gift annuity*” means a charitable gift annuity that is described by section 501(m)(5) or 514(c)(5) of the Internal Revenue Code, if all of the following apply:

a. The annuity agreement is issued by a charitable organization.

b. On the date that the annuity agreement is issued, the charitable organization has a minimum value of the lesser of three hundred thousand dollars or five times the face amount of total outstanding annuities in unrestricted cash, cash equivalents, or publicly traded securities. However, the total outstanding annuities as provided in this paragraph do not include assets funding the annuity agreement.

c. The charitable organization has been in continuous operation for at least three years or is a successor or affiliate of a charitable organization that has been in continuous operation for at least three years.

2001 Acts, ch 28, §2

NEW section

508F.2 Qualified charitable gift annuity is not insurance.

1. The issuance of a qualified charitable gift annuity does not constitute engaging in the business of insurance in this state.

2. A charitable gift annuity that meets the requirements of a qualified charitable gift annuity shall be deemed to be a qualified charitable gift annuity for purposes of this chapter, regardless of whether the charitable gift annuity was issued prior to July 1, 2001. The issuance of that charitable gift annuity shall not be construed as engaging in the business of insurance in this state.

2001 Acts, ch 28, §3

NEW section

508F.3 Annuity agreement — notice to donor.

An agreement for a qualified charitable gift annuity executed by a charitable organization and a donor shall be in writing. The annuity agreement shall include a notice stating that a qualified charitable gift annuity is not insurance under the laws of this state and is not subject to regulation by the commissioner or protected by an insurance guaranty fund or an insurance guaranty association. The notice required by this section shall be in a separate paragraph and in a type size no smaller than that generally used in the annuity agreement.

2001 Acts, ch 28, §4

NEW section

508F.4 Notice filed with the commissioner.

1. A charitable organization that issues qualified charitable gift annuities in this state on and after July 1, 2001, shall file a notice with the commissioner in writing not later than the date on which it executes the organization’s first qualified charitable annuity agreement. All of the following shall apply:

a. The notice must be signed by an officer or director of the charitable organization.

b. The notice must identify the name and address of the charitable organization.

c. The notice must include a copy of the determination letter issued by the internal revenue service.

d. The notice must certify that the charitable organization is a bona fide charitable organization and that the annuities issued by the charitable organization are qualified charitable gift annuities.

2. The charitable organization is not required to submit additional information, unless the information is to be used to determine appropriate penalties that may be applicable under section 508F.5.

2001 Acts, ch 28, §5
Transition provisions applicable to deadline for notice of annuity issuance; 2001 Acts, ch 28, §10
NEW section

508F.5 Failure to comply with requirements.

1. The failure of a charitable organization to comply with the requirements of sections 508F.3 and 508F.4 does not prevent a charitable gift annuity that otherwise meets the requirements of this chapter from constituting a qualified charitable gift annuity.

2. The commissioner shall enforce performance of the requirements of sections 508F.3 and 508F.4. The commissioner may do any of the following:

a. Send a letter by restricted certified mail to the charitable organization demanding that the charitable organization comply with this chapter.

b. Establish and impose civil penalties on the charitable organization in an amount not to ex-

ceed one thousand dollars for each qualified charitable gift annuity issued until the charitable organization complies with the requirements of this chapter.

2001 Acts, ch 28, §6
Transition provisions applicable to deadline for notice of annuity issuance; 2001 Acts, ch 28, §10
NEW section

508F.6 Penalties.

The commissioner may determine, after hearing, that the issuance of an annuity is not in compliance with this chapter and that the entity issuing the annuity is subject to the provisions and penalties of chapters 507A and 507B.

2001 Acts, ch 28, §7
NEW section

508F.7 Not unfair or deceptive trade practice.

The issuance of a qualified charitable gift annuity does not constitute a violation of chapter 507B.

2001 Acts, ch 28, §8
NEW section

508F.8 Rules.

The commissioner may adopt rules pursuant to chapter 17A necessary to administer and enforce this chapter.

2001 Acts, ch 28, §9
NEW section

CHAPTER 509A

GROUP INSURANCE FOR PUBLIC EMPLOYEES

Printed in Addendum

CHAPTER 511

PROVISIONS APPLICABLE TO LIFE INSURANCE COMPANIES AND ASSOCIATIONS

511.4 Advertisements — who deemed agent.

The provisions of section 515.125 shall apply to life insurance companies and associations.

2001 Acts, ch 16, §8, 37; 2001 Acts, ch 69, §12
2001 amendment striking the applicability of sections 515.123, 515.124,

and 515.126 to life insurance companies and associations takes effect January 1, 2002; 2001 Acts, ch 16, §37

For provisions applicable from July 1, 2001, to January 1, 2002, see 2001 Acts, ch 69, §12
See Code editor's note
Section amended

CHAPTER 512B

FRATERNAL BENEFIT SOCIETIES

512B.31 Licensing of agents. Repealed by 2001 Acts, ch 16, § 36, 37. See chapter 522B.

Repeal is effective January 1, 2002; 2001 Acts, ch 16, §37

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 insurance coverages.

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 for health insurance plans with the same or similar coverage.

3. *“Basic health benefit plan”* means a plan established by the board of the small employer health reinsurance program pursuant to section 513B.13, subsection 8, paragraph “a”.

4. *“Carrier”* means an entity subject to the insurance laws and regulations of this state, or subject to the jurisdiction of the commissioner, that contracts or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including an insurance company offering sickness and accident plans, a health maintenance organization, a nonprofit health service corporation, or any other entity providing a plan of health insurance, health benefits, or health services.

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 insurance coverages meet one or more of the following requirements:

(1) The coverages 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 coverages have been acquired from another small employer carrier as a distinct group-

ing of plans.

(3) The coverages 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. *“Creditable coverage”* means health benefits or coverage provided to an individual under any of the following:

a. A group health plan.

b. Health insurance coverage.

c. Part A or Part B Medicare pursuant to Title XVIII of the federal Social Security Act.

d. Medicaid pursuant to Title XIX of the federal Social Security Act, other than coverage consisting solely of benefits under section 1928 of that Act.

e. 10 U.S.C. ch. 55.

f. A health or medical care program provided through the Indian health service or a tribal organization.

g. A state health benefits risk pool.

h. A health plan offered under 5 U.S.C. ch. 89.

i. A public health plan as defined under federal regulations.

j. A health benefit plan under section 5(e) of the federal Peace Corps Act, 22 U.S.C. § 2504(e).

k. An organized delivery system licensed by the director of public health.

l. A short-term limited duration policy.

9. *“Division”* means the division of insurance.

10. *“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 health insurance coverage of a small employer, but does not include an employee who works on a part-time, temporary, or substitute basis.

11. *a.* *“Group health plan”* means an employee welfare benefit plan as defined in section 3(1) of the federal Employee Retirement Income Security Act of 1974, to the extent that the plan provides

medical care including items and services paid for as medical care to employees or their dependents as defined under the terms of the plan directly or through insurance, reimbursement, or otherwise.

b. For purposes of this subsection, “*medical care*” means amounts paid for any of the following:

(1) The diagnosis, cure, mitigation, treatment, or prevention of disease, or amounts paid for the purpose of affecting a structure or function of the body.

(2) Transportation primarily for and essential to medical care referred to in subparagraph (1).

(3) Insurance covering medical care referred to in subparagraph (1) or (2).

c. For purposes of this subsection, a partnership which establishes and maintains a plan, fund, or program to provide medical care to present or former partners in the partnership or to their dependents directly or through insurance, reimbursement, or other method, which would not be an employee benefit welfare plan but for this paragraph, shall be treated as an employee benefit welfare plan which is a group health plan.

(1) For purposes of a group health plan, an employer includes the partnership in relation to any partner.

(2) For purposes of a group health plan, the term “*participant*” also includes both of the following:

(a) An individual who is a partner in relation to a partnership which maintains a group health plan.

(b) An individual who is a self-employed individual in connection with a group health plan maintained by the self-employed individual where one or more employees are participants, if the individual is or may become eligible to receive a benefit under the plan or the individual’s beneficiaries may be eligible to receive a benefit.

12. a. “*Health insurance coverage*” means benefits consisting of health care provided directly, through insurance or reimbursement, or otherwise and including items and services paid for as health care under a hospital or health service policy or certificate, hospital or health service plan contract, or health maintenance organization contract offered by a carrier.

b. “*Health insurance coverage*” does not include any of the following:

(1) Coverage for accident-only, or disability income insurance.

(2) Coverage issued as a supplement to liability insurance.

(3) Liability insurance, including general liability insurance and automobile liability insurance.

(4) Workers’ compensation or similar insurance.

(5) Automobile medical-payment insurance.

(6) Credit-only insurance.

(7) Coverage for on-site medical clinic care.

(8) Other similar insurance coverage, speci-

fied in federal regulations, under which benefits for medical care are secondary or incidental to other insurance coverage or benefits.

c. “*Health insurance coverage*” does not include benefits provided under a separate policy as follows:

(1) Limited scope dental or vision benefits.

(2) Benefits for long-term care, nursing home care, home health care, or community-based care.

(3) Any other similar limited benefits as provided by rule of the commissioner.

d. “*Health insurance coverage*” does not include benefits offered as independent noncoordinated benefits as follows:

(1) Coverage only for a specified disease or illness.

(2) A hospital indemnity or other fixed indemnity insurance.

e. “*Health insurance coverage*” does not include Medicare supplemental health insurance as defined under § 1882(g)(1) of the federal Social Security Act, coverage supplemental to the coverage provided under 10 U.S.C. ch. 55, and similar supplemental coverage provided to coverage under group health insurance coverage.

f. “*Group health insurance coverage*” means health insurance coverage offered in connection with a group health plan.

13. “*Index rate*” means, for each class of business for small employers, the average of the applicable base premium rate and the corresponding highest premium rate.

14. “*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 creditable coverage at the time of the initial enrollment.

(2) The individual lost creditable coverage as a result of termination of the individual’s employment or eligibility, the involuntary termination of the creditable coverage, death of the individual’s spouse, or the individual’s divorce.

(3) The individual requests enrollment within thirty days after termination of the creditable coverage.

b. The individual is employed by an employer that offers multiple health insurance coverages and the individual elects a different coverage 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 insurance coverage and the request for enrollment is made within thirty days after issuance of the court order.

d. The individual changes status and becomes

an eligible employee and requests enrollment within sixty-three days after the date of the change in status.

e. The individual was covered under a mandated continuation of group health plan or group health insurance coverage plan until the coverage under that plan was exhausted.

15. “*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 for newly issued health insurance coverages with the same or similar coverage.

16. “*Preexisting conditions exclusion*” means, with respect to health insurance coverage, a limitation or exclusion of benefits relating to a condition based on the fact that the condition was present before the date of enrollment for such coverage, whether or not any medical advice, diagnosis, care, or treatment was recommended or received before such date.

17. “*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.

18. “*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.

19. “*Small employer carrier*” means any carrier which offers health benefit plans covering the employees of a small employer.

20. “*Standard health benefit plan*” means a plan established by the board of the small employer health reinsurance program pursuant to section 513B.13, subsection 8, paragraph “a”.

2001 Acts, ch 69, §13, 39
2001 amendments to subsections 3 and 20 take effect January 1, 2002;
2001 Acts, ch 69, §39
Subsections 3 and 20 amended

513B.4 Restrictions relating to the premium rates.

1. Premium rates for health benefit plans subject to this subchapter are subject to the following requirements:

a. The index rate for a rating period for any class of business shall not exceed the index rate for any other class of business by more than twenty percent.

b. For a class of business, the premium rates charged during a rating period to small employers with similar case characteristics for the same or similar coverage, or the rates which could be charged to such employers under the rating system for that class of business, shall not vary from the index rate by more than twenty-five percent of

the index rate.

c. The percentage increase in the premium rate charged to a small employer for a new rating period shall not exceed the sum of the following:

(1) The percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period. In the case of a class of business for which the small employer carrier is not issuing new policies, the small employer carrier shall use the percentage change in the base premium rate, provided that the change does not exceed, on a percentage basis, the change in the new business premium rate for the most similar health insurance coverage into which the small employer carrier is actively enrolling new insureds who are small employers.

(2) An adjustment, not to exceed fifteen percent annually and adjusted pro rata for rating periods of less than one year, due to the claim experience, health status, or duration of coverage of the employees or dependents of the small employer as determined from the small employer carrier’s rate manual for the class of business.

(3) Any adjustment due to change in coverage or change in the case characteristics of the small employer as determined from the small employer carrier’s rate manual for the class of business.

2. This section does not affect the use by a small employer carrier of legitimate rating factors other than claim experience, health status, or duration of coverage in the determination of premium rates. Small employer carriers shall apply rating factors, including case characteristics, consistently with respect to all small employers in a class of business.

Case characteristics other than age, geographic area, family composition, and group size shall not be used by a small employer carrier without the prior approval of the commissioner.

Rating factors shall produce premiums for identical groups which differ only by amounts attributable to coverage design and do not reflect differences due to the nature of the groups assumed to select particular health benefit plans. A small employer carrier shall treat all health insurance coverages issued or renewed in the same calendar month as having the same rating period.

3. For purposes of this section, a health insurance coverage that contains a restricted network provision shall not be considered similar coverage to a health insurance coverage that does not contain such a provision, if the restriction of benefits to network providers results in substantial differences in claims costs.

4. A small employer shall not be involuntarily transferred by a small employer carrier into or out of a class of business. A small employer carrier shall not offer to transfer a small employer into or out of a class of business unless the offer is made to transfer all small employers in the class of business without regard to case characteristics, claim experience, health status, or duration since issue.

5. Notwithstanding subsection 1, the commissioner, with the concurrence of the board of the Iowa small employer health reinsurance program established in section 513B.13, may by order reduce or eliminate the allowed rating bands provided under subsection 1, paragraphs “a”, “b”, and “c”, or otherwise limit or eliminate the use of experience rating.

2001 Acts, ch 69, §14, 15, 39
 2001 amendments striking subsection 1, paragraphs d and e, and subsection 2 take effect January 1, 2002; 2001 Acts, ch 69, §39
 Subsection 1, paragraphs d and e stricken
 Subsection 2 stricken and former subsections 3 – 6 renumbered as 2 – 5

513B.9 Reserved.

513B.10 Availability of coverage.

1. *a.* A carrier or an organized delivery system that offers health insurance coverage in the small group market shall accept every small employer that applies for health insurance coverage and shall accept for enrollment under such coverage every eligible individual who applies for enrollment during the period in which the individual first becomes eligible to enroll under the terms of the health insurance coverage and shall not place any restriction which is inconsistent with eligibility rules established under this chapter.

b. A carrier or organized delivery system that offers health insurance coverage in the small group market through a network plan may do either of the following:

(1) Limit employers that may apply for such coverage to those with eligible individuals who live, work, or reside in the service area for such network plan.

(2) Deny such coverage to such employers within the service area of such plan if the carrier or organized delivery system has demonstrated to the applicable state authority both of the following:

(a) The carrier or organized delivery system will not have the capacity to deliver services adequately to enrollees of any additional groups because of its obligations to existing group contract holders and enrollees.

(b) The carrier or organized delivery system is applying this subparagraph uniformly to all employers without regard to the claims experience of those employers and their employees and their dependents, or any health status-related factor relating to such employees or dependents.

c. A carrier or organized delivery system, upon denying health insurance coverage in any service area pursuant to paragraph “b”, subparagraph (2), shall not offer coverage in the small group market within such service area for a period of one hundred eighty days after the date such coverage is denied.

d. A carrier or organized delivery system may deny health insurance coverage in the small group market if the issuer has demonstrated to the commissioner or director of public health both of the following:

(1) The carrier or organized delivery system does not have the financial reserves necessary to underwrite additional coverage.

(2) The carrier or organized delivery system is applying the provisions of this paragraph uniformly to all employers in the small group market in this state consistent with state law and without regard to the claims experience of those employers and the employees and dependents of such employers, or any health status-related factor relating to such employees and their dependents.

e. A carrier or organized delivery system, upon denying health insurance coverage pursuant to paragraph “d”, shall not offer coverage in connection with health insurance coverages in the small group market in this state for a period of one hundred eighty days after the date such coverage is denied or until the carrier or organized delivery system has demonstrated to the commissioner or director of public health that the carrier or organized delivery system has sufficient financial reserves to underwrite additional coverage, whichever is later. The commissioner or director may provide for the application of this paragraph on a service area-specific basis.

f. Paragraph “a” shall not be construed to preclude a carrier or organized delivery system from establishing employer contribution rules or group participation rules for the offering of health insurance coverage in the small group market.

2. A carrier or organized delivery system, subject to subsection 1, shall issue health insurance coverage to an eligible small employer that applies for the coverage and agrees to make the required premium payments and satisfy the other reasonable provisions of the health insurance coverage not inconsistent with this chapter. A carrier or organized delivery system is not required to issue health insurance coverage to a self-employed individual who is covered by, or is eligible for coverage under, health insurance coverage offered by an employer.

3. Health insurance coverage for small employers shall satisfy all of the following:

a. A carrier or organized delivery system offering group health insurance coverage, with respect to a participant or beneficiary, may impose a pre-existing condition exclusion only as follows:

(1) The exclusion relates to a condition, whether physical or mental, regardless of the cause of the condition, for which medical advice, diagnosis, care, or treatment was recommended or received within the six-month period ending on the enrollment date. However, genetic information shall not be treated as a condition under this subparagraph in the absence of a diagnosis of the condition related to such information.

(2) The exclusion extends for a period of not more than twelve months, or eighteen months in the case of a late enrollee, after the enrollment date.

(3) The period of any such preexisting condition exclusion is reduced by the aggregate of the periods of creditable coverage applicable to the participant or beneficiary as of the enrollment date.

b. A carrier or organized delivery system offering group health insurance coverage shall not impose any preexisting condition exclusion as follows:

(1) In the case of a child who is adopted or placed for adoption before attaining eighteen years of age and who, as of the last day of the thirty-day period beginning on the date of the adoption or placement for adoption, is covered under creditable coverage. This subparagraph shall not apply to coverage before the date of such adoption or placement for adoption.

(2) In the case of an individual who, as of the last day of the thirty-day period beginning with the date of birth, is covered under creditable coverage.

(3) Relating to pregnancy as a preexisting condition.

c. A carrier or organized delivery system shall waive any waiting period applicable to a preexisting condition exclusion or limitation period with respect to particular services under health insurance coverage for the period of time an individual was covered by creditable coverage, provided that the creditable coverage was continuous to a date not more than sixty-three days prior to the effective date of the new coverage. Any period that an individual is in a waiting period for any coverage under group health insurance coverage, or is in an affiliation period, shall not be taken into account in determining the period of continuous coverage. A health maintenance organization that does not use preexisting condition limitations in any of its health insurance coverage may impose an affiliation period. For purposes of this section, "*affiliation period*" means a period of time not to exceed sixty days for new entrants and not to exceed ninety days for late enrollees during which no premium shall be collected and coverage issued is not effective, so long as the affiliation period is applied uniformly, without regard to any health status-related factors. This paragraph does not preclude application of a waiting period applicable to all new enrollees under the health insurance coverage, provided that any carrier or organized delivery system-imposed waiting period is no longer than sixty days and is used in lieu of a preexisting condition exclusion.

d. Health insurance coverage may exclude coverage for late enrollees for preexisting conditions for a period not to exceed eighteen months.

e. (1) Requirements used by a carrier or organized delivery system in determining whether to provide coverage to a small employer shall be applied uniformly among all small employers applying for coverage or receiving coverage from the carrier or organized delivery system.

(2) In applying minimum participation re-

quirements with respect to a small employer, a carrier or organized delivery system shall not consider employees or dependents who have other creditable coverage in determining whether the applicable percentage of participation is met.

(3) A carrier or organized delivery system shall not increase any requirement for minimum employee participation or modify any requirement for minimum employer contribution applicable to a small employer at any time after the small employer has been accepted for coverage.

f. (1) If a carrier or organized delivery system offers coverage to a small employer, the carrier or organized delivery system shall offer coverage to all eligible employees of the small employer and the employees' dependents. A carrier or organized delivery system shall not offer coverage to only certain individuals or dependents in a small employer group or to only part of the group.

(2) Except as provided under paragraphs "a" and "d", a carrier or organized delivery system shall not modify health insurance coverage with respect to a small employer or any eligible employee or dependent through riders, endorsements, or other means, to restrict or exclude coverage or benefits for certain diseases, medical conditions, or services otherwise covered by the health insurance coverage.

g. A carrier or organized delivery system offering coverage through a network plan shall not be required to offer coverage or accept applications pursuant to subsection 1 with respect to a small employer where any of the following apply:

(1) The small employer does not have eligible individuals who live, work, or reside in the service area for the network plan.

(2) The small employer does have eligible individuals who live, work, or reside in the service area for the network plan, but the carrier or organized delivery system, if required, has demonstrated to the commissioner or the director of public health that it will not have the capacity to deliver services adequately to enrollees of any additional groups because of its obligations to existing group contract holders and enrollees and that it is applying the requirements of this lettered paragraph uniformly to all employers without regard to the claims experience of those employers and their employees and the employees' dependents, or any health status-related factor relating to such employees and dependents.

(3) A carrier or organized delivery system, upon denying health insurance coverage in a service area pursuant to subparagraph (2), shall not offer coverage in the small employer market within such service area for a period of one hundred eighty days after the coverage is denied.

4. A carrier or organized delivery system shall not be required to offer coverage to small employers pursuant to subsection 1 for any period of time where the commissioner or director of public health determines that the acceptance of the of-

fers by small employers in accordance with subsection 1 would place the carrier or organized delivery system in a financially impaired condition.

5. A carrier or organized delivery system shall not be required to provide coverage to small employers pursuant to subsection 1 if the carrier or organized delivery system elects not to offer new coverage to small employers in this state. However, a carrier or organized delivery system that elects not to offer new coverage to small employers under this subsection shall be allowed to maintain its existing policies in the state, subject to the requirements of section 513B.5.

6. A carrier or organized delivery system that elects not to offer new coverage to small employers pursuant to subsection 5 shall provide notice to the commissioner or director of public health and is prohibited from writing new business in the small employer market in this state for a period of five years from the date of notice to the commissioner or director.

2001 Acts, ch 69, §16, 17, 39
2001 amendments to subsection 1, paragraph a, and striking subsection 3 take effect January 1, 2002; 2001 Acts, ch 69, §39
Subsection 1, paragraph a amended
Subsection 3 stricken and former subsections 4 – 7 renumbered as 3 – 6

513B.13 Small employer carrier reinsurance program.

1. A nonprofit corporation is established to be known as the Iowa small employer health reinsurance program.

2. A reinsuring carrier is subject to this program.

3. *a.* The program shall operate subject to the supervision and control of a board. Subject to the provisions of paragraph “*b*”, the board shall consist of nine members appointed by the commissioner, and the commissioner or the commissioner’s designee, who shall serve as an ex officio member and as chairperson of the board.

b. In appointing the members of the board, the commissioner shall include representatives of small employers and small employer carriers and such other individuals as determined to be qualified by the commissioner. At least five of the members of the board shall be representatives of carriers and shall be selected from individuals nominated by small employer carriers in this state pursuant to procedures and guidelines provided by rule of the commissioner.

c. Members shall be appointed for terms of three years. A board member’s term shall continue until the member’s successor is appointed.

d. A vacancy in the board shall be filled by the commissioner for the remainder of the term. A member of the board may be removed by the commissioner for cause.

4. The board may submit a plan of operation to the commissioner. The commissioner, after notice and hearing, may approve a plan of operation if the commissioner determines that the plan is suitable

to assure the fair, reasonable, and equitable administration of the program, and provides for the sharing of program gains and losses on an equitable and proportionate basis in accordance with the provisions of this section. A plan of operation is effective upon written approval of the commissioner.

5. The board may submit to the commissioner any amendments to the plan necessary or suitable to assure the fair, reasonable, and equitable administration of the program. The amendments shall be effective upon the written approval of the commissioner.

6. The plan of operation shall do all of the following:

a. Establish procedures for the handling and accounting of program assets and moneys, and for an annual fiscal reporting to the commissioner.

b. Establish procedures for selecting an administering carrier and setting forth the powers and duties of the administering carrier.

c. Establish procedures for reinsuring risks in accordance with the provisions of this section.

d. Establish procedures for collecting assessments from reinsuring carriers to fund claims and administrative expenses incurred or estimated to be incurred by the program.

e. Establish a methodology for applying the dollar thresholds contained in this section for carriers that pay or reimburse health care providers through capitation or a salary.

f. Provide for any additional matters necessary to implement and administer the program.

7. The same general powers and authority granted under the laws of this state to insurance companies and health maintenance organizations licensed to transact business in this state may be exercised by the board under the program, except the power to issue health insurance coverages directly to either groups or individuals. Additionally, the board is granted the specific authority to do all or any of the following:

a. Enter into contracts as necessary or proper to administer the provisions and purposes of this subchapter, including the authority, with the approval of the commissioner, to enter into contracts with similar programs in other states for the joint performance of common functions or with persons or other organizations for the performance of administrative functions.

b. Sue or be sued, including taking any legal action necessary or proper to recover any assessments and penalties for, on behalf of, or against the program or any reinsuring carriers.

c. Take any legal action necessary to avoid the payment of improper claims made against the program.

d. Define the health insurance coverages for which reinsurance will be provided, and issue reinsurance policies, pursuant to this subchapter.

e. Establish rules, conditions, and procedures for reinsuring risks under the program.

f. Establish and implement actuarial functions as appropriate for the operation of the program.

g. Assess reinsuring carriers in accordance with the provisions of subsection 11, and make advance interim assessments as may be reasonable and necessary for organizational and interim operating expenses. Any interim assessments shall be credited as offsets against any regular assessments due following the close of the calendar year.

h. Appoint appropriate legal, actuarial, and other committees as necessary to provide technical assistance in the operation of the program, policy and other contract design, and any other function within the authority of the program.

i. Borrow money to effect the purposes of the program. Any notes or other evidence of indebtedness of the program not in default are legal investments for carriers and may be carried as admitted assets.

8. A reinsuring carrier may reinsure with the program as provided in this section.

a. The program shall reinsure up to the level of coverage provided in either a basic health benefit plan or standard health benefit plan established by the board.

b. A small employer carrier may reinsure an entire employer group within sixty days of the commencement of the group's coverage under health insurance coverage.

c. A reinsuring carrier may reinsure an eligible employee or dependent within a period of sixty days following the commencement of the coverage with the small employer. A newly eligible employee or dependent of a reinsured small employer may be reinsured within sixty days of the commencement of such person's coverage.

d. (1) The program shall not reimburse a reinsuring carrier with respect to the claims of a reinsured employee or dependent until the small employer carrier has incurred an initial level of claims for such employee or dependent of five thousand dollars in a calendar year for benefits covered by the program. In addition, the reinsuring carrier is responsible for ten percent of the next fifty thousand dollars of incurred claims during a calendar year and the program shall reinsure the remainder. A reinsuring carrier's liability under this subparagraph shall not exceed a maximum limit of ten thousand dollars in any one calendar year with respect to any reinsured individual.

(2) The board annually shall adjust the initial level of claims and the maximum limit to be retained by the small employer carrier to reflect increases in costs and utilization within the standard market for health benefit plans within the state. The adjustment shall not be less than the annual change in the medical component of the "consumer price index for all urban consumers" of the United States department of labor, bureau of labor statistics, unless the board proposes and the commissioner approves a lower adjustment factor.

e. A small employer carrier may terminate reinsurance for one or more of the reinsured employees or dependents of a small employer on any plan anniversary date.

f. Premium rates charged for reinsurance by the program to a health maintenance organization that is federally qualified under 42 U.S.C. § 300c(c)(2)(A), and is thereby subject to requirements that limit the amount of risk that may be ceded to the program that are more restrictive than those specified in paragraph "d", shall be reduced to reflect that portion of the risk above the amount set forth in paragraph "d" that may not be ceded to the program, if any.

9. *a.* The board, as part of the plan of operation, shall establish a methodology for determining premium rates to be charged by the program for reinsuring small employers and individuals pursuant to this section. The methodology shall include a system for classification of small employers that reflects the types of case characteristics commonly used by small employer carriers in the state. The methodology shall provide for the development of base reinsurance premium rates, which shall be multiplied by the factors set forth in paragraph "b" to determine the premium rates for the program. The base reinsurance premium rates shall be established by the board, subject to the approval of the commissioner, and shall be set at levels which reasonably approximate gross premiums charged to small employers by small employer carriers for health insurance coverages with benefits similar to the standard health benefit plan.

b. Premiums for the program shall be as follows:

(1) An entire small employer group may be reinsured for a rate that is one and one-half times the base reinsurance premium rate for the group established pursuant to this subsection.

(2) An eligible employee or dependent may be reinsured for a rate that is five times the base reinsurance premium rate for the individual established pursuant to this subsection.

c. The board periodically shall review the methodology established under paragraph "a", including the system of classification and any rating factors, to assure that it reasonably reflects the claims experience of the program. The board may propose changes to the methodology which shall be subject to the approval of the commissioner.

10. If health insurance coverage for a small employer is entirely or partially reinsured with the program, the premium charged to the small employer for any rating period for the coverage issued shall meet the requirements relating to premium rates set forth in section 513B.4.

11. *a.* Prior to March 1 of each year, the board shall determine and report to the commissioner the program net loss for the previous calendar year, including administrative expenses and incurred losses for the year, taking into account investment

income and other appropriate gains and losses.

b. Any net loss for the year shall be recouped by assessments of reinsuring carriers.

(1) The board shall establish, as part of the plan of operation, a formula by which to make assessments against reinsuring carriers. The assessment formula shall be based on both of the following:

(a) Each reinsuring carrier's share of the total premiums earned in the preceding calendar year from health insurance coverages delivered or issued for delivery to small employers in this state by reinsuring carriers.

(b) Each reinsuring carrier's share of the premiums earned in the preceding calendar year from newly issued health insurance coverages delivered or issued for delivery during such calendar year to small employers in this state by reinsuring carriers.

(2) The formula established pursuant to subparagraph (1) shall not result in any reinsuring carrier having an assessment share that is less than fifty percent nor more than one hundred fifty percent of an amount which is based on the proportion of the reinsuring carrier's total premiums earned in the preceding calendar year from health insurance coverages delivered or issued for delivery to small employers in this state by reinsuring carriers to total premiums earned in the preceding calendar year from health insurance coverages delivered or issued for delivery to small employers in this state by all reinsuring carriers.

(3) The board, with approval of the commissioner, may change the assessment formula established pursuant to subparagraph (1) from time to time as appropriate. The board may provide for the shares of the assessment base attributable to premiums from all health insurance coverages and to premiums from newly issued health insurance coverages to vary during a transition period.

(4) Subject to the approval of the commissioner, the board shall make an adjustment to the assessment formula for reinsuring carriers that are approved health maintenance organizations which are federally qualified under 42 U.S.C. § 300 et seq., to the extent, if any, that restrictions are placed on them that are not imposed on other small employer carriers.

(5) Premiums and benefits paid by a reinsuring carrier that are less than an amount determined by the board to justify the cost of collection shall not be considered for purposes of determining assessments.

c. (1) Prior to March 1 of each year, the board shall determine and file with the commissioner an estimate of the assessments needed to fund the losses incurred by the program in the previous calendar year.

(2) If the board determines that the assessments needed to fund the losses incurred by the program in the previous calendar year will exceed the amount specified in subparagraph (3), the

board shall evaluate the operation of the program and report its findings, including any recommendations for changes to the plan of operation, to the commissioner within ninety days following the end of the calendar year in which the losses were incurred. The evaluation shall include: an estimate of future assessments, the administrative costs of the program, the appropriateness of the premiums charged, and the level of insurer retention under the program and the costs of coverage for small employers. If the board fails to file the report with the commissioner within ninety days following the end of the applicable calendar year, the commissioner may evaluate the operations of the program and implement such amendments to the plan of operation the commissioner deems necessary to reduce future losses and assessments.

(3) For any calendar year, the amount specified in this subparagraph is five percent of total premiums earned in the previous year from health insurance coverages delivered or issued for delivery to small employers in this state by reinsuring carriers.

(4) If assessments in each of two consecutive calendar years exceed by ten percent the amount specified in subparagraph (3), the commissioner may relieve carriers from any or all of the regulations of this subchapter or take such other actions as the commissioner deems equitable and necessary to spread the risk of loss and assure portability of coverages and continuity of benefits so as to reduce assessments to ten percent or less of that amount specified in subparagraph (3).

d. If assessments exceed net losses of the program, the excess shall be held in an interest-bearing account and used by the board to offset future losses or to reduce program premiums. As used in this paragraph, "future losses" includes reserves for incurred but not reported claims.

e. Each reinsuring carrier's proportion of the assessment shall be determined annually by the board based on annual statements and other reports deemed necessary by the board and filed by the reinsuring carriers with the board.

f. The plan of operation shall provide for the imposition of an interest penalty for late payment of assessments.

g. A reinsuring carrier may seek from the commissioner a deferment from all or part of an assessment imposed by the board. The commissioner may defer all or part of the assessment of a reinsuring carrier if the commissioner determines that the payment of the assessment would place the reinsuring carrier in a financially impaired condition. If all or part of an assessment against a reinsuring carrier is deferred, the amount deferred shall be assessed against the other participating carriers in a manner consistent with the basis for assessment set forth in this subsection. The reinsuring carrier receiving such deferment shall remain liable to the program for the amount deferred and shall be prohibited from reinsuring

any individuals or groups in the program until such time as it pays such assessments.

12. The participation in the program as re-insuring carriers, the establishment of rates, forms, or procedures, or any other joint or collective action required by this subchapter shall not be the basis of any legal action, criminal or civil liability, or penalty against the program or any of its re-insuring carriers either jointly or separately.

13. The program is exempt from any and all state or local taxes.

14. The board of the Iowa small employer health reinsurance program, on an ongoing basis, shall review the program and make recommendations as to the continued cost effectiveness of the program to the commissioner, which recommendations may include proposed modifications or suspension of operation of the program. In making such a review, the board shall consider such factors as the population reinsured by the program, the premiums and assessments paid to the program, the number and percentage of carriers electing to utilize the program, health care reform measures implemented in the state, as well as other factors deemed relevant by the board. The commissioner, upon finding that the program is not cost effective, may make modifications to the program or suspend the operation of the program by rule.

2001 Acts, ch 69, §18 – 22, 39

2001 amendments are effective January 1, 2002; 2001 Acts, ch 69, §39
Subsection 3, paragraph c stricken and former paragraphs d and e reded-

ignated as c and d

Subsection 3, paragraph c amended

Subsection 4 amended and redesignated as subsections 4 and 5

Former subsection 5 stricken

Subsection 8, paragraph a amended

Subsection 13 stricken and former subsections 14 and 15 renumbered as 13 and 14

513B.14 Health benefit plan standards.

Repealed by 2001 Acts, ch 69, § 38, 39.

For provisions applicable from July 1, 2001, to January 1, 2002, see 2001 Acts, ch 125, §1

Repeal is effective January 1, 2002; 2001 Acts, ch 69, §39

See Code editor's note

513B.16 Applicability of certain state laws. Repealed by 2001 Acts, ch 69, § 38, 39.

Repeal is effective January 1, 2002; 2001 Acts, ch 69, §39

513B.17A Restoration of terminated coverage. Repealed by 2001 Acts, ch 69, § 38, 39.

Repeal is effective January 1, 2002; 2001 Acts, ch 69, §39

513B.18 Effective date — applicability. Repealed by 2001 Acts, ch 69, § 38, 39.

Repeal is effective January 1, 2002; 2001 Acts, ch 69, §39

SUBCHAPTER II

BASIC BENEFIT COVERAGE

513B.31 through 513B.43 Repealed by 2001 Acts, ch 69, § 38, 39.

Repeal is effective January 1, 2002; 2001 Acts, ch 69, §39

CHAPTER 513C

INDIVIDUAL HEALTH INSURANCE MARKET REFORM

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 under chapter 514E, 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.

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.

2001 Acts, ch 125, §2
Subsection 2 amended

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

at least every three years to reflect the current state of the individual market.

2001 Acts, ch 125, §3
Section amended

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. Notwithstanding subsection 4, a commission shall be paid to an agent related to the sale of a basic or standard health benefit plan under this chapter. A commission paid pursuant to this subsection shall not be considered by the board for purposes of section 513C.10, subsection 5.

6. 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.

7. 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.

8. A violation of this section by a carrier or an agent is an unfair trade practice under chapter 507B.

9. 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.

Section not amended; internal reference change applied

513C.10 Iowa individual health benefit reinsurance association.

1. The Iowa individual health benefit reinsurance association is established as a nonprofit corporation.

a. 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 the association.

b. 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 the board of directors established under chapter 514E.

2. Rates for basic and standard coverages as provided in this chapter shall be determined by each carrier or organized delivery system as the product of a basic and standard factor and the lowest rate available for issuance by that carrier or organized delivery system adjusted for rating characteristics and benefits. Basic and standard factors shall be established annually by the Iowa individual health benefit reinsurance association board with the approval of the commissioner. Multiple basic and standard factors for a distinct grouping of basic and standard policies may be established. A basic and standard factor is limited to a minimum value defined as the ratio of the average of the lowest rate available for issuance and the maximum rate allowable by law divided by the lowest rate available for issuance. A basic and standard factor is limited to a maximum value defined as the ratio of the maximum rate allowable by law divided by the lowest rate available for issuance. The maximum rate allowable by law and the lowest rate available for issuance is determined based on the rate restrictions under this chapter. For policies written after January 1, 2002, rates for the basic and standard coverages as provided in this chapter shall be calculated using the basic and standard factors and shall be no low-

er than the maximum rate allowable by law. However, to maintain assessable loss assessments at or below one percent of total health insurance premiums or payments as determined in accordance with subsection 6, the Iowa individual health benefit reinsurance association board with the approval of the commissioner may increase the value for any basic and standard factor greater than the maximum value.

The Iowa individual health benefit reinsurance association may, with the approval of the commissioner, increase cost sharing provisions including, but not limited to, basic and standard plan deductibles, coinsurance, or copayments.

3. 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.

4. 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.

5. 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.

6. 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.

7. 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 sys-

tem's respective share of premium for basic and standard plans to the statewide total premium for all basic and standard plans.

8. 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.

9. 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 poli-

cies for that carrier or organized delivery system or by petitioning the commissioner or director, as appropriate, for remedy.

10. *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.

2001 Acts, ch 125, §4 - 6
Subsection 1 amended
Subsections 2 - 5 stricken and former subsections 6 - 14 renumbered as 2 - 10
Subsection 2 amended

CHAPTER 514A

ACCIDENT AND HEALTH INSURANCE

514A.3 Accident and sickness policy provisions.

1. *Required provisions.* Except as provided in subsection 3 of this section each such policy delivered or issued for delivery to any person in this state shall contain the provisions specified in this subsection in the words in which the same appear in this section; provided, however, that the insurer may, at its option, substitute for one or more of such provisions corresponding provisions of different wording approved by the commissioner which are in each instance not less favorable in any respect to the insured or the beneficiary. Such provisions shall be preceded individually by the caption appearing in this subsection or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the commissioner may approve.

a. A provision as follows:

Entire contract — changes: This policy, including the endorsements and the attached papers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the insurer and unless such approval be endorsed hereon or attached hereto. No agent has authority to change this policy or to waive any of its provisions.

b. A provision as follows:

Time limit on certain defenses: (1) After two years from the date of issue of this policy no misstatements, except fraudulent misstatements, made by the applicant in the application for such policy shall be used to void the policy or to deny a

claim for loss incurred or disability (as defined in the policy) commencing after the expiration of this two-year period.

(The foregoing policy provision shall not be so construed as to affect any legal requirement for avoidance of a policy or denial of a claim during such initial two-year period, nor to limit the application of subsection 2, paragraphs "a", "b", "c", "d" and "e", in the event of misstatement with respect to age or occupation or other insurance.)

(A policy which the insured has the right to continue in force subject to its terms by the timely payment of premium (*a*) until at least age fifty or, (*b*) in the case of a policy issued after age forty-four, for at least five years from its date of issue, may contain in lieu of the foregoing the following provision (from which the clause in parentheses may be omitted at the insurer's option) under the caption "incontestable":

After this policy has been in force for a period of two years during the lifetime of the insured, (excluding any period during which the insured is disabled), it shall become incontestable as to the statements contained in the application.)

(2) No claim for loss incurred or disability (as defined in the policy) commencing after two years from the date of issue of this policy shall be reduced or denied on the ground that a disease or physical condition not excluded from coverage by name or specific description effective on the date of loss had existed prior to the effective date of coverage of this policy.

c. A provision as follows:

Grace period: A grace period of (insert a number not less than “7” for weekly premium policies, “10” for monthly premium policies and “31” for all other policies) days will be granted for the payment of each premium falling due after the first premium, during which grace period the policy shall continue in force.

(A policy which contains a cancellation provision may add, at the end of the above provision, subject to the right of the insurer to cancel in accordance with the cancellation provision hereof.

A policy in which the insurer reserves the right to refuse any renewal shall have, at the beginning of the above provision,

Unless not less than five days prior to the premium due date the insurer has delivered to the insured or has mailed to the insured’s last address as shown by the records of the insurer written notice of its intention not to renew this policy beyond the period for which the premium has been accepted.)

d. A provision as follows:

Reinstatement: If any renewal premium be not paid within the time granted the insured for payment, a subsequent acceptance of premium by the insurer or by any agent duly authorized by the insurer to accept such premium, without requiring in connection therewith an application for reinstatement, shall reinstate the policy; provided, however, that if the insurer or such agent requires an application for reinstatement and issues a conditional receipt for the premium tendered, the policy will be reinstated upon approval of such application by the insurer or, lacking such approval, upon the forty-fifth day following the date of such conditional receipt unless the insurer has previously notified the insured in writing of its disapproval of such application. The reinstated policy shall cover only loss resulting from such accidental injury as may be sustained after the date of reinstatement and loss due to such sickness as may begin more than ten days after such date. In all other respects the insured and insurer shall have the same rights thereunder as they had under the policy immediately before the due date of the defaulted premium, subject to any provisions endorsed hereon or attached hereto in connection with the reinstatement. Any premium accepted in connection with a reinstatement shall be applied to a period for which premium has not been previously paid, but not to any period more than sixty days prior to the date of reinstatement.

(The last sentence of the above provision may be omitted from any policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums (1) until at least age fifty or, (2) in the case of a policy issued after age forty-four, for at least five years from its date of issue.)

e. A provision as follows:

Notice of claim: Written notice of claim must be given to the insurer within twenty days after the

occurrence or commencement of any loss covered by the policy, or as soon thereafter as is reasonably possible. Notice given by or on behalf of the insured or the beneficiary to the insurer at (insert the location of such office as the insurer may designate for the purpose), or to any authorized agent of the insurer, with information sufficient to identify the insured, shall be deemed notice to the insurer.

(In a policy providing a loss-of-time benefit which may be payable for at least two years, an insurer may at its option insert the following between the first and second sentences of the above provision:

Subject to the qualifications set forth below, if the insured suffers loss of time on account of disability for which indemnity may be payable for at least two years, the insured shall, at least once in every six months after having given notice of claim, give to the insurer notice of continuance of said disability, except in the event of legal incapacity. The period of six months following any filing of proof by the insured or any payment by the insurer on account of such claim or any denial of liability in whole or in part by the insurer shall be excluded in applying this provision. Delay in the giving of such notice shall not impair the insured’s right to any indemnity which would otherwise have accrued during the period of six months preceding the date on which such notice is actually given.)

f. A provision as follows:

Claim forms: The insurer, upon receipt of a notice of claim, will furnish to the claimant such forms as are usually furnished by it for filing proofs of loss. If such forms are not furnished within fifteen days after the giving of such notice the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting, within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, the character and the extent of the loss for which claim is made.

g. A provision as follows:

Proofs of loss: Written proof of loss must be furnished to the insurer at its said office in case of claim for loss for which this policy provides any periodic payment contingent upon continuing loss within ninety days after the termination of the period for which the insurer is liable and in case of claim for any other loss within ninety days after the date of such loss. Failure to furnish such proof within the time required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within such time, provided such proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity, later than one year from the time proof is otherwise required.

h. A provision as follows:

Time of payment of claims: Indemnities payable under this policy for any loss other than loss for

which this policy provides any periodic payment will be paid immediately upon receipt of due written proof of such loss. Subject to due written proof of loss, all accrued indemnities for loss for which this policy provides periodic payment will be paid (insert period for payment which must not be less frequently than monthly) and any balance remaining unpaid upon the termination of liability will be paid immediately upon receipt of due written proof.

i. A provision as follows:

Payment of claims: Indemnity for loss of life will be payable in accordance with the beneficiary designation and the provisions respecting such payment which may be prescribed herein and effective at the time of payment. If no such designation or provision is then effective, such indemnity shall be payable to the estate of the insured. Any other accrued indemnities unpaid at the insured's death may, at the option of the insurer, be paid either to such beneficiary or to such estate. All other indemnities will be payable to the insured.

(The following provisions, or either of them, may be included with the foregoing provision at the option of the insurer:

If any indemnity of this policy shall be payable to the estate of the insured, or to an insured or beneficiary who is a minor or otherwise not competent to give a valid release, the insurer may pay such indemnity, up to an amount not exceeding \$ (insert an amount which shall not exceed one thousand dollars), to any relative by blood or connection by marriage of the insured or beneficiary who is deemed by the insurer to be equitably entitled thereto. Any payment made by the insurer in good faith pursuant to this provision shall fully discharge the insurer to the extent of such payment.

Subject to any written direction of the insured in the application or otherwise all or a portion of any indemnities provided by this policy on account of hospital, nursing, medical, or surgical services may, at the insurer's option and unless the insured requests otherwise in writing not later than the time of filing proofs of such loss, be paid directly to the hospital or person rendering such services; but it is not required that the service be rendered by a particular hospital or person.)

j. A provision as follows:

Physical examinations and autopsy: The insurer at its own expense shall have the right and opportunity to examine the person of the insured when and as often as it may reasonably require during the pendency of a claim hereunder and to make an autopsy in case of death where it is not forbidden by law.

k. A provision as follows:

Legal actions: No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty days after written proof of loss has been furnished in accordance with the requirements of this policy. No such action shall be

brought after the expiration of three years after the time written proof of loss is required to be furnished.

l. A provision as follows:

Change of beneficiary: Unless the insured makes an irrevocable designation of beneficiary, the right to change of beneficiary is reserved to the insured and the consent of the beneficiary or beneficiaries shall not be requisite to surrender or assignment of this policy or to any change of beneficiary or beneficiaries, or to any other changes in this policy.

(The first clause of this provision, relating to the irrevocable designation of beneficiary, may be omitted at the insurer's option.)

m. A provision as follows:

Right to return policy: The insured has the right, within ten days after receipt of this policy, to return it to the company at its home office or branch office or to the agent through whom it was purchased, and if so returned the premium paid will be refunded and the policy will be void from the beginning and the parties shall be in the same position as if a policy had not been issued.

The foregoing provision shall be prominently printed on the first page of the policy or attached to the policy.

The provisions of this paragraph "m" and section 507B.4, subsections 12 and 13* shall apply to any insurance policy which is delivered or issued for delivery or renewed in this state on or after July 1, 1978.

2. Other provisions. Except as provided in subsection 3 of this section, no such policy delivered or issued for delivery to any person in this state shall contain provisions respecting the matters set forth below unless such provisions are in the words in which the same appear in this section; provided, however, that the insurer may, at its option, use in lieu of any such provision a corresponding provision of different wording approved by the commissioner which is not less favorable in any respect to the insured or the beneficiary. Any such provision contained in the policy shall be preceded individually by the appropriate caption appearing in this subsection or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the commissioner may approve.

a. A provision as follows:

Change of occupation: If the insured be injured or contract sickness after having changed the insured's occupation to one classified by the insurer as more hazardous than that stated in this policy or while doing for compensation anything pertaining to an occupation so classified, the insurer will pay only such portion of the indemnities provided in this policy as the premium paid would have purchased at the rates and within the limits fixed by the insurer for such more hazardous occupation. If the insured changes the insured's occupation to one classified by the insurer as less hazardous

than that stated in this policy, the insurer, upon receipt of proof of such change of occupation, will reduce the premium rate accordingly, and will return the excess pro rata unearned premium from the date of change of occupation or from the policy anniversary date immediately preceding receipt of such proof, whichever is the more recent. In applying this provision, the classification of occupational risk and the premium rates shall be such as have been last filed by the insurer prior to the occurrence of the loss for which the insurer is liable or prior to date of proof of change in occupation with the state official having supervision of insurance in the state where the insured resided at the time this policy was issued; but if such filing was not required, then the classification of occupational risk and the premium rates shall be those last made effective by the insurer in such state prior to the occurrence of the loss or prior to the date of proof of change in occupation.

b. A provision as follows:

Misstatement of age: If the age of the insured has been misstated, all amounts payable under this policy shall be such as the premium paid would have purchased at the correct age.

c. A provision as follows:

Other insurance in this insurer: If an accident or sickness or accident and sickness policy or policies previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity for (insert type of coverage or coverages) in excess of \$ (insert maximum limit of indemnity or indemnities) the excess insurance shall be void and all premiums paid for such excess shall be returned to the insured or to the insured's estate.

Or, in lieu thereof:

Insurance effective at any one time on the insured under a like policy or policies in this insurer is limited to the one such policy elected by the insured, or the insured's beneficiary or estate, as the case may be, and the insurer will return all premiums paid for all other such policies.

d. A provision as follows:

Insurance with other insurers: If there be other valid coverage, not with this insurer, providing benefits for the same loss on a provision of service basis or on an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability under any expense incurred coverage of this policy shall be for such proportion of the loss as the amount which would otherwise have been payable hereunder plus the total of the like amounts under all such other valid coverages for the same loss of which this insurer had notice bears to the total like amounts under all valid coverages for such loss, and for the return of such portion of the premiums paid as shall exceed the pro rata portion for the amount so determined. For the purpose of applying this provision when other coverage is on a provision of service basis, the "like

amount" of such other coverage shall be taken as the amount which the services rendered would have cost in the absence of such coverage.

(If the foregoing policy provision is included in a policy which also contains the next following policy provision there shall be added to the caption of the foregoing provision the phrase "— expense incurred benefits". The insurer may, at its option, include in this provision a definition of "other valid coverage", approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, and by hospital or medical service organizations, and to any other coverage the inclusion of which may be approved by the commissioner. In the absence of such definition such term shall not include group insurance, automobile medical payments insurance, or coverage provided by hospital or medical service organizations or by union welfare plans or employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute (including any workers' compensation or employer's liability statute) whether provided by a governmental agency or otherwise shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the foregoing policy provision no third party liability coverage shall be included as "other valid coverage".)

e. A provision as follows:

Insurance with other insurers: If there be other valid coverage, not with this insurer, providing benefits for the same loss on other than an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability for such benefits under this policy shall be for such proportion of the indemnities otherwise provided hereunder for such loss as the like indemnities of which the insurer had notice (including the indemnities under this policy) bear to the total amount of all like indemnities for such loss, and for the return of such portion of the premium paid as shall exceed the pro rata portion for the indemnities thus determined.

(If the foregoing policy provision is included in a policy which also contains the next preceding policy provision there shall be added to the caption of the foregoing provision the phrase "— other benefits". The insurer may, at its option, include in this provision a definition of "other valid coverage", approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, and to any other

coverage the inclusion of which may be approved by the commissioner. In the absence of such definition such term shall not include group insurance, or benefits provided by union welfare plans or by employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute (including any workers' compensation or employer's liability statute) whether provided by a governmental agency or otherwise shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the foregoing policy provision no third party liability coverage shall be included as "other valid coverage".)

f. A provision as follows:

Relation of earnings to insurance: If the total monthly amount of loss of time benefits promised for the same loss under all valid loss of time coverage upon the insured, whether payable on a weekly or monthly basis, shall exceed the monthly earnings of the insured at the time disability commenced or the insured's average monthly earnings for the period of two years immediately preceding a disability for which claim is made, whichever is the greater, the insurer will be liable only for such proportionate amount of such benefits under this policy as the amount of such monthly earnings or such average monthly earnings of the insured bears to the total amount of monthly benefits for the same loss under all such coverage upon the insured at the time such disability commences and for the return of such part of the premiums paid during such two years as shall exceed the pro rata amount of the premiums for the benefits actually paid hereunder; but this shall not operate to reduce the total monthly amount of benefits payable under all such coverage upon the insured below the sum of two hundred dollars or the sum of the monthly benefits specified in such coverages, whichever is the lesser, nor shall it operate to reduce benefits other than those payable for loss of time.

(The foregoing policy provision may be inserted only in a policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums (1) until at least age fifty or, (2) in the case of a policy issued after age forty-four, for at least five years from its date of issue. The insurer may, at its option, include in this provision a definition of "valid loss of time coverage", approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by governmental agencies or by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, or to any other coverage the inclusion of which may be approved by the commissioner or any combination of such coverages. In the absence of such definition such term shall not include any coverage

provided for such insured pursuant to any compulsory benefit statute (including any workers' compensation or employer's liability statute), or benefits provided by union welfare plans or by employer or employee benefit organizations.)

g. A provision as follows:

Unpaid premium: Upon the payment of a claim under this policy, any premium then due and unpaid or covered by any note or written order may be deducted therefrom.

h. A provision as follows:

Cancellation: The insurer may cancel this policy at any time by written notice delivered to the insured, or mailed to the insured's last address as shown by the records of the insurer, stating when, not less than five days thereafter, such cancellation shall be effective; and after the policy has been continued beyond its original term the insured may cancel this policy at any time by written notice delivered or mailed to the insurer, effective upon receipt or on such later date as may be specified in such notice. In the event of cancellation, the insurer will return promptly the unearned portion of any premium paid. If the insured cancels, the earned premium shall be computed by the use of the short-rate table last filed with the state official having supervision of insurance in the state where the insured resided when the policy was issued. If the insurer cancels, the earned premium shall be computed pro rata. Cancellation shall be without prejudice to any claim originating prior to the effective date of cancellation.

i. A provision as follows:

Conformity with state statutes: Any provision of this policy which, on its effective date, is in conflict with the statutes of the state in which the insured resides on such date is hereby amended to conform to the minimum requirements of such statutes.

j. A provision as follows:

Illegal occupation: The insurer shall not be liable for any loss to which a contributing cause was the insured's commission of or attempt to commit a felony or to which a contributing cause was the insured's being engaged in an illegal occupation.

k. A provision as follows:

Intoxicants and narcotics: The insurer shall not be liable for any loss sustained or contracted in consequence of the insured's being intoxicated or under the influence of any narcotic unless administered on the advice of a physician.

3. *Inapplicable or inconsistent provisions.* If any provision of this section is in whole or in part inapplicable to or inconsistent with the coverage provided by a particular form of policy the insurer, with the approval of the commissioner, shall omit from such policy any inapplicable provision or part of a provision, and shall modify any inconsistent provision or part of the provision in such manner as to make the provision as contained in the policy consistent with the coverage provided by the policy.

4. *Order of certain policy provisions.* The

provisions which are the subject of subsections 1 and 2 of this section, or any corresponding provisions which are used in lieu thereof in accordance with such subsections, shall be printed in the consecutive order of the provisions in such subsections or, at the option of the insurer, any such provision may appear as a unit in any part of the policy, with other provisions to which it may be logically related, provided the resulting policy shall not be in whole or in part unintelligible, uncertain, ambiguous, abstruse, or likely to mislead a person to whom the policy is offered, delivered or issued.

5. *Third party ownership.* The word “insured”, as used in this chapter, shall not be construed as preventing a person other than the insured with a proper insurable interest from making application for and owning a policy covering the insured or from being entitled under such a policy to any indemnities, benefits and rights provided therein.

6. *Requirements of other jurisdictions.*

a. Any policy of a foreign or alien insurer, when delivered or issued for delivery to any person in this state, may contain any provision which is not less favorable to the insured or the beneficiary than the provisions of this chapter and which is prescribed or required by the law of the state under which the insurer is organized.

b. Any policy of a domestic insurer may, when issued for delivery in any other state or country, contain any provision permitted or required by the laws of such other state or country.

7. *Filing procedure.* The commissioner may make such reasonable rules and regulations concerning the procedure for the filing or submission of policies subject to this chapter as are necessary, proper or advisable to the administration of this chapter. This provision shall not abridge any other authority granted the commissioner by law.

*Former subsections 12 and 13 were stricken from section 507B.4 by 80 Acts, ch 1015, §61; corrective legislation is pending
Section not amended; footnote added

CHAPTER 514B

HEALTH MAINTENANCE ORGANIZATIONS

514B.19 Regulation of insurance producers.

The commissioner may, after notice and hearing, promulgate such reasonable rules under the provisions of chapter 522B that are necessary to provide for the licensing of insurance producers

who engage in solicitation or enrollment for a health maintenance organization.

2001 Acts, ch 16, §14, 37
2001 amendment takes effect January 1, 2002; 2001 Acts, ch 16, §37
Section amended

CHAPTER 514E

IOWA COMPREHENSIVE HEALTH INSURANCE ASSOCIATION

514E.1 Definitions.

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

1. “*Association*” means the Iowa comprehensive health insurance association established by section 514E.2.

2. “*Association policy*” means an individual or group policy issued by the association that provides the coverage specified in section 514E.4.

3. “*Carrier*” means an insurer providing accident and sickness insurance under chapter 509, 514 or 514A and includes a health maintenance organization established under chapter 514B if payments received by the health maintenance organization are considered premiums pursuant to section 514B.31 and are taxed under chapter 432. “*Carrier*” also includes a corporation which becomes a mutual insurer pursuant to section 514.23 and any other person as defined in section

4.1, subsection 20, who is or may become liable for the tax imposed by chapter 432.

4. “*Church plan*” means the same as defined in the federal Employee Retirement Income Security Act of 1974, 29 U.S.C. § 3(33).

5. “*Commissioner*” means the commissioner of insurance.

6. “*Creditable coverage*” means health benefits or coverage provided to an individual under any of the following:

a. A group health plan.

b. Health insurance coverage.

c. Part A or Part B Medicare pursuant to Title XVIII of the federal Social Security Act.

d. Medicaid pursuant to Title XIX of the federal Social Security Act, other than coverage consisting solely of benefits under section 1928 of that Act.

e. 10 U.S.C. ch. 55.

f. A health or medical care program provided through the Indian health service or a tribal organization.

g. A state health benefits risk pool.

h. A health plan offered under 5 U.S.C. ch. 89.

i. A public health plan as defined under federal regulations.

j. A health benefit plan under section 5(e) of the federal Peace Corps Act, 22 U.S.C. § 2504(e).

k. An organized delivery system licensed by the director of public health.

7. “Director” means the director of public health.

8. “Eligible expenses” means the usual, customary and reasonable charges for the health care services specified in section 514E.4.

9. “Federally eligible individual” means an individual who satisfies the following:

a. For whom, as of the date on which the individual seeks coverage under this chapter, the aggregate of the periods of creditable coverage is eighteen or more months with no more than a sixty-three day lapse of coverage, and whose most recent prior creditable coverage was under a group health plan, governmental plan, or church plan, or health insurance coverage offered in connection with any such plan.

b. Who is not eligible for coverage under a group health plan, Part A or Part B of Title XVIII of the federal Social Security Act, or a state plan under Title XIX of that Act, or any successor program, and does not have other health insurance coverage.

c. With respect to whom the most recent coverage within the coverage period described in paragraph “a” was not terminated based on a nonpayment of premiums or fraud.

d. If the individual had been offered the option of continuation coverage under a COBRA continuation provision or under a similar state program, and elected such coverage.

e. Who, if the individual elected continuation coverage as provided in paragraph “d”, has exhausted the continuation coverage under the provision or program.

10. “Governmental plan” means as defined under section 3(32) of the federal Employee Retirement Income Security Act of 1974 and any federal governmental plan.

11. a. “Group health plan” means an employee welfare benefit plan as defined in section 3(1) of the federal Employee Retirement Income Security Act of 1974, to the extent that the plan provides medical care including items and services paid for as medical care to employees or their dependents as defined under the terms of the plan directly or through insurance, reimbursement, or otherwise.

b. For purposes of this subsection, “medical care” means amounts paid for any of the following:

(1) The diagnosis, cure, mitigation, treatment,

or prevention of disease, or amounts paid for the purpose of affecting a structure or function of the body.

(2) Transportation primarily for and essential to medical care referred to in subparagraph (1).

(3) Insurance covering medical care referred to in subparagraph (1) or (2).

c. For purposes of this chapter, the following apply:

(1) A plan, fund, or program established or maintained by a partnership which, but for this subsection, would not be an employee welfare benefit plan, shall be treated as an employee welfare benefit plan which is a group health plan to the extent that the plan, fund, or program provides medical care, including items and services paid for as medical care for present or former partners in the partnership or to the dependents of such partners, as defined under the terms of the plan, fund, or program, either directly or through insurance, reimbursement, or otherwise.

(2) With respect to a group health plan, the term “employer” includes a partnership with respect to a partner.

(3) With respect to a group health plan, the term “participant” includes the following:

(a) With respect to a group health plan maintained by a partnership, an individual who is a partner in the partnership.

(b) With respect to a group health plan maintained by a self-employed individual under which one or more of the self-employed individual’s employees are participants, the self-employed individual, if that individual is, or may become, eligible to receive benefits under the plan or the individual’s dependents may be eligible to receive benefits under the plan.

12. “Health care facility” means a health care facility as defined in section 135C.1, a hospital as defined in section 135B.1, or a community mental health center established under chapter 230A.

13. “Health care services” means services, the coverage of which is authorized under chapter 509, chapter 514, chapter 514A, or chapter 514B as limited by sections 514E.4 and 514E.5, and includes services for the purposes of preventing, alleviating, curing, or healing human illness, injury or physical disability.

14. “Health insurance” means accident and sickness insurance authorized by chapter 509, 514 or 514A.

15. a. “Health insurance coverage” means health insurance coverage offered to individuals.

b. “Health insurance coverage” does not include any of the following:

(1) Coverage for accident-only, or disability income insurance.

(2) Coverage issued as a supplement to liability insurance.

(3) Liability insurance, including general li-

ability insurance and automobile liability insurance.

- (4) Workers' compensation or similar insurance.
- (5) Automobile medical-payment insurance.
- (6) Credit-only insurance.
- (7) Coverage for on-site medical clinic care.
- (8) Other similar insurance coverage, specified in federal regulations, under which benefits for medical care are secondary or incidental to other insurance coverage or benefits.

c. "Health insurance coverage" does not include benefits provided under a separate policy as follows:

- (1) Limited-scope dental or vision benefits.
- (2) Benefits for long-term care, nursing home care, home health care, or community-based care.
- (3) Any other similar limited benefits as provided by rule of the commissioner.

d. "Health insurance coverage" does not include benefits offered as independent noncoordinated benefits as follows:

- (1) Coverage only for a specified disease or illness.
- (2) A hospital indemnity or other fixed indemnity insurance.

e. "Health insurance coverage" does not include Medicare supplemental health insurance as defined under section 1882(g)(1) of the federal Social Security Act, coverage supplemental to the coverage provided under 10 U.S.C. ch. 55 and similar supplemental coverage provided to coverage under group health insurance coverage.

16. "Insured" means an individual who is provided qualified comprehensive health insurance under an association policy, which policy may include dependents and other covered persons.

17. "Involuntary termination" includes, but is not limited to, termination of coverage when a conversion policy is not available or where benefits under a state or federal law providing for continuation of coverage upon termination of employment will cease or have ceased.

18. "Medicaid" means the federal-state assistance program established under Title XIX of the federal Social Security Act.

19. "Medicare" means the federal government health insurance program established under Title XVIII of the Social Security Act.

20. "Organized delivery system" means an organized delivery system as licensed by the director of the department of public health.

21. "Policy" means a contract, policy, or plan of health insurance.

22. "Policy year" means a consecutive twelve-month period during which a policy provides or obligates the carrier to provide health insurance.

23. "Preexisting condition exclusion", with respect to coverage, means a limitation or exclusion of benefits relating to a condition based on the fact that the condition was present before the date of enrollment for such coverage, whether or not any

medical advice, diagnosis, care, or treatment was recommended or received before such date.

2001 Acts, ch 69, §23
Subsection 15, paragraph a amended

514E.2 Iowa comprehensive health insurance association.

1. The Iowa comprehensive health insurance association is established as a nonprofit corporation. The association shall assure that health insurance, as limited by sections 514E.4 and 514E.5, is made available to each eligible Iowa resident and each federally eligible individual applying to the association for coverage. The association shall also be responsible for administering the Iowa individual health benefit reinsurance association pursuant to all of the terms and conditions contained in chapter 513C.

a. All carriers as defined in section 514E.1, subsection 3, and all organized delivery systems licensed by the director of public health providing health insurance or health care services in Iowa shall be members of the association.

b. The association shall operate under a plan of operation established and approved under subsection 3 and shall exercise its powers through a board of directors established under this section.

2. The board of directors of the association shall consist of all of the following:

a. Two members who shall be representatives of the two largest domestic carriers of individual health insurance in the state as of the calendar year ending December 31, 2000, based on earned premium standards.

b. Three members who shall be representatives of the three largest carriers of health insurance in the state, based on earned premium standards, excluding Medicare supplement coverage premiums, that are not otherwise represented.

c. Two members selected by the members of the association, one of whom shall be a representative from a corporation operating pursuant to chapter 514 on July 1, 1989, or any successor in interest, and one of whom shall be a representative of an organized delivery system or an insurer providing coverage pursuant to chapter 509 or 514A.

d. Four public members selected by the governor.

e. The commissioner or the commissioner's designee from the division of insurance.

f. Two members of the general assembly, one of whom shall be appointed by the speaker of the house and one of whom shall be appointed by the president of the senate, after consultation with the majority leader and the minority leader of the senate, who shall be ex officio, nonvoting members.

The composition of the board of directors shall be in compliance with sections 69.16 and 69.16A. The governor's appointees shall be chosen from a broad cross-section of the residents of this state.

Members of the board may be reimbursed from the moneys of the association for expenses incurred by them as members, but shall not be otherwise compensated by the association for their services.

3. The association shall submit to the commissioner a plan of operation for the association and any amendments necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation becomes effective upon approval in writing by the commissioner prior to the date on which the coverage under this chapter must be made available. After notice and hearing, the commissioner shall approve the plan of operation if the plan is determined to be suitable to assure the fair, reasonable, and equitable administration of the association, and provides for the sharing of association losses, if any, on an equitable and proportionate basis among the member carriers. If the association fails to submit a suitable plan of operation within one hundred eighty days after the appointment of the board of directors, or if at any later time the association fails to submit suitable amendments to the plan, the commissioner shall adopt, pursuant to chapter 17A, rules necessary to implement this section. The rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner. In addition to other requirements, the plan of operation shall provide for all of the following:

- a.* The handling and accounting of assets and moneys of the association.
- b.* The amount and method of reimbursing members of the board.
- c.* Regular times and places for meeting of the board of directors.
- d.* Records to be kept of all financial transactions, and the annual fiscal reporting to the commissioner.
- e.* Procedures for selecting the board of directors and submitting the selections to the commissioner for approval.
- f.* The periodic advertising of the general availability of health insurance coverage from the association.
- g.* Additional provisions necessary or proper for the execution of the powers and duties of the association.

4. The plan of operation may provide that the powers and duties of the association may be delegated to a person who will perform functions similar to those of the association. A delegation under this section takes effect only upon the approval of both the board of directors and the commissioner. The commissioner shall not approve a delegation unless the protections afforded to the insured are substantially equivalent to or greater than those provided under this chapter.

5. The association has the general powers and authority enumerated by this subsection and exe-

cuted in accordance with the plan of operation approved by the commissioner under subsection 3. The association has the general powers and authority granted under the laws of this state to carriers licensed to issue health insurance. In addition, the association may do any of the following:

a. Enter into contracts as necessary or proper to carry out this chapter.

b. Sue or be sued, including taking any legal action necessary or proper for recovery of any assessments for, on behalf of, or against participating carriers.

c. Take legal action necessary to avoid the payment of improper claims against the association or the coverage provided by or through the association.

d. Establish or utilize a medical review committee to determine the reasonably appropriate level and extent of health care services in each instance.

e. Establish appropriate rates, scales of rates, rate classifications, and rating adjustments, which rates shall not be unreasonable in relation to the coverage provided and the reasonable operations expenses of the association.

f. Pool risks among members.

g. Issue association policies on an indemnity or provision of service basis providing the coverage required by this chapter.

h. Administer separate pools, separate accounts, or other plans or arrangements considered appropriate for separate members or groups of members.

i. Operate and administer any combination of plans, pools, or other mechanisms considered appropriate to best accomplish the fair and equitable operation of the association.

j. Appoint from among members appropriate legal, actuarial, and other committees as necessary to provide technical assistance in the operation of the association, policy and other contract design, and any other functions within the authority of the association.

k. Hire independent consultants as necessary.

l. Develop a method of advising applicants of the availability of other coverages outside the association, and shall promulgate a list of health conditions the existence of which would make an applicant eligible without demonstrating a rejection of coverage by one carrier.

m. Include in its policies a provision providing for subrogation rights by the association in a case in which the association pays expenses on behalf of an individual who is injured or suffers a disease under circumstances creating a liability upon another person to pay damages to the extent of the expenses paid by the association but only to the extent the damages exceed the policy deductible and coinsurance amounts paid by the insured. The association may waive its subrogation rights if it determines that the exercise of the rights would be impractical, uneconomical, or would work a hard-

ship on the insured.

6. Rates for coverages issued by the association shall not be unreasonable in relation to the benefits provided, the risk experience, and the reasonable expenses of providing coverage. Separate scales of rates based on age may apply for individual risks. Rates must take into consideration the extra morbidity and administration expenses, if any, for risks insured in the association. The rates for a given classification shall not be more than one hundred fifty percent of the average premium or payment rate for that classification charged by the five carriers with the largest health insurance premium or payment volume in the state during the preceding calendar year. In determining the average rate of the five largest carriers, the rates or payments charged by the carriers shall be actuarially adjusted to determine the rate or payment that would have been charged for benefits similar to those issued by the association.

7. Following the close of each calendar year, the association shall determine the net premiums and payments, the expenses of administration, and the incurred losses of the association for the year. The association shall certify the amount of any net loss for the preceding calendar year to the commissioner of insurance and director of revenue and finance. Any loss shall be assessed by the association to all members in proportion to their respective shares of total health insurance premiums or payments for subscriber contracts received in Iowa during the second preceding calendar year, or with paid losses in the year, coinciding with or ending during the calendar year or on any other equitable basis as provided in the plan of operation. In sharing losses, the association may abate or defer in any part the assessment of a member, if, in the opinion of the board, payment of the assessment would endanger the ability of the member to fulfill its contractual obligations. The association may also provide for an initial or interim assessment against members of the association if necessary to assure the financial capability of the association to meet the incurred or estimated claims expenses or operating expenses of the association until the next calendar year is completed.

Net gains, if any, must be held at interest to offset future losses or allocated to reduce future premiums.

8. The association shall conduct periodic audits to assure the general accuracy of the financial data submitted to the association, and the association shall have an annual audit of its operations, made by an independent certified public accountant.

9. The association is subject to examination by the commissioner of insurance. Not later than April 30 of each year, the board of directors shall submit to the commissioner a financial report for the preceding calendar year in a form approved by the commissioner.

10. The association is subject to oversight by the legislative fiscal committee of the legislative council. Not later than April 30 of each year, the board of directors shall submit to the legislative fiscal committee a financial report for the preceding year in a form approved by the committee.

11. All policy forms issued by the association must be filed with and approved by the commissioner before their use.

12. The association is exempt from payment of all fees and all taxes levied by this state or any of its political subdivisions.

13. A member who, after July 1, 1986, has paid one or more assessments levied under this chapter may take a credit against the premium taxes, or similar taxes, upon revenues or income of the member that are imposed by the state on health insurance premiums pursuant to chapter 432 or payments subject to taxation under section 514B.31, up to the amount of twenty percent of those taxes due, for each of the five calendar years following the year for which an assessment was paid, or until the aggregate of those assessments has been offset by credits against those taxes if this occurs first. If a member ceases doing business, all uncredited assessments may be credited against its premium tax liability for the year it ceases doing business.

2001 Acts, ch 125, §7
Subsections 1 and 2 amended

CHAPTER 514J

EXTERNAL REVIEW OF HEALTH CARE COVERAGE DECISIONS

514J.3A Notice.

When a claim is denied in whole or in part based on medical necessity, the carrier or organized delivery system shall provide a notice in writing to the enrollee of the internal appeal mechanism provided under the carrier or organized delivery system's plan or policy.

At the time of a coverage decision, the carrier or organized delivery system shall notify the enrollee in writing of the right to have the coverage decision reviewed under the external review process.

2001 Acts, ch 69, §24
NEW section

514J.4 External review request — fee.

1. The enrollee, or the enrollee's treating health care provider acting on behalf of the enrollee, may file a written request for external review of the coverage decision with the commissioner. The request must be filed within sixty days of the receipt of the coverage decision. However, the enrollee's treating health care provider does not have a duty to request external review.

2. The request for external review must be accompanied by a twenty-five dollar filing fee. The commissioner may waive the filing fee for good cause. The filing fee shall be refunded if the enrollee prevails in the external review process.

2001 Acts, ch 69, §25
Subsection 1 stricken and former subsections 2 and 3 renumbered as 1 and 2

514J.5 Certification of request — eligibility.

1. The commissioner shall have two business days from receipt of a request for an external review to certify the request. The commissioner shall certify the request if all of the following criteria are satisfied:

a. The enrollee was covered by the carrier or organized delivery system at the time the service or treatment was proposed or received.

b. The enrollee has been denied coverage based on a determination by the carrier or organized delivery system that the proposed or received service or treatment does not meet the definition of medical necessity as defined in the carrier's or organized delivery system's plan or policy.

c. The enrollee, or the enrollee's treating health care provider acting on behalf of the enrollee, has exhausted all internal appeal mechanisms provided under the carrier's or the organized delivery system's plan or policy.

d. The written request for external review was filed within sixty days of receipt of the coverage decision.

2. The commissioner shall notify the enrollee, or the enrollee's treating health care provider acting on behalf of the enrollee, and the carrier or organized delivery system in writing of the certification.

3. The carrier or organized delivery system has three business days to contest the commissioner's certification decision. If the commissioner finds that the request for external review is not eligible for certification, the commissioner, within two business days, shall notify the enrollee, or the enrollee's treating health care provider acting on behalf of the enrollee, in writing of the reasons that the request for external review is not eligible for certification.

If the commissioner finds that the request for external review is eligible for certification, notwithstanding the contest by the carrier or orga-

nized delivery system, the commissioner shall notify the carrier or organized delivery system in writing of the reasons for upholding the certification.

2001 Acts, ch 69, §26
Section amended

514J.7 External review.

The external review process shall meet the following criteria:

1. The carrier or organized delivery system, within three business days of a receipt of an eligible request for an external review from the commissioner, or within three business days of receipt of the commissioner's denial of the carrier's or organized delivery system's contest of the certification of the request under section 514J.5, subsection 3, whichever is later, shall do all of the following:

a. Select an independent review entity from the list certified by the commissioner. The independent review entity shall be an expert in the treatment of the medical condition under review. The independent review entity shall not be a subsidiary of, or owned or controlled by, the carrier or organized delivery system, or owned or controlled by a trade association of carriers or organized delivery systems of which the carrier or organized delivery system is a member.

b. Notify the enrollee, and the enrollee's treating health care provider, of the name, address, and telephone number of the independent review entity and of the enrollee's and treating health care provider's right to submit additional information.

c. Notify the selected independent review entity by facsimile that the carrier or organized delivery system has chosen it to do the independent review and provide sufficient descriptive information to identify the type of experts needed to conduct the review.

d. Provide to the commissioner by facsimile a copy of the notices sent to the enrollee and to the selected independent review entity.

2. The independent review entity, within three business days of receipt of the notice, shall select a person to perform the external review and shall provide notice to the enrollee of a brief description of the person including the reasons the person selected is an expert in the treatment of the medical condition under review. The independent review entity does not need to disclose the name of the person. A copy of the notice shall be sent by facsimile to the commissioner. If the independent review entity does not have a person who is an expert in the treatment of the medical condition under review and certified by the commissioner to conduct an independent review, the independent review entity may either decline the review request or may request from the commissioner additional

time to have such an expert certified. The independent review entity shall notify the commissioner by facsimile of its choice between these options within three business days of receipt of the notice from the carrier or organized delivery system. The commissioner shall provide a notice to the enrollee and carrier or organized delivery system of the independent review entity's decision and of the commissioner's decision as to how to proceed with the external review process within three business days of receipt of the independent review entity's decision.

3. The enrollee, or the enrollee's treating health care provider acting on behalf of the enrollee, may object to the independent review entity selected by the carrier or organized delivery system or to the person selected as the reviewer by the independent review entity by notifying the commissioner and carrier or organized delivery system within ten days of the mailing of the notice by the independent review entity. The commissioner shall have two business days from receipt of the objection to consider the reasons set forth in support of the objection to approve or deny the objection, to select an independent review entity if necessary, and to provide notice of the commissioner's decision to the enrollee, the enrollee's treating health care provider, and the carrier or organized delivery system.

4. The carrier or organized delivery system, within fifteen days of the mailing of the notice by the independent review entity, or within three business days of a receipt of notice by the commissioner following an objection by the enrollee, whichever is later, shall do all of the following:

a. Provide to the independent review entity any information submitted to the carrier or organized delivery system by the enrollee or the enrollee's treating health care provider in support of the request for coverage of a service or treatment under the carrier's or organized delivery system's appeal procedures.

b. Provide to the independent review entity any other relevant documents used by the carrier or organized delivery system in determining whether the proposed service or treatment should have been provided.

c. Provide to the commissioner a confirmation that the information required in paragraphs "a" and "b" has been provided to the independent review entity, including the date the information was provided.

5. The enrollee, or the enrollee's treating health care provider, may provide to the indepen-

dent review entity any information submitted under any internal appeal mechanisms provided under the carrier's or organized delivery system's evidence of coverage, and other newly discovered relevant information. The enrollee shall have ten business days from the mailing date of the notification of the person selected as the reviewer by the independent review entity to provide this information. The independent review entity may reasonably decide whether to consider any information provided by the enrollee or the enrollee's treating health care provider after the ten-day period.

6. The independent review entity shall notify the enrollee and the enrollee's treating health care provider of any additional medical information required to conduct the review within five business days of receipt of the documentation required under subsection 4. The enrollee or the enrollee's treating health care provider shall provide the requested information to the independent review entity within five days after receipt of the notification requesting additional medical information. The independent review entity may reasonably decide whether to consider any information provided by the enrollee or the enrollee's treating health care provider after the five-day period. The independent review entity shall notify the commissioner and the carrier or organized delivery system of this request.

7. The independent review entity shall submit its external review decision as soon as possible, but not later than thirty days from the date the independent review entity received the information required under subsection 4 from the carrier or organized delivery system. The independent review entity, for good cause, may request an extension of time from the commissioner. The independent review entity's external review decision shall be mailed to the enrollee or the treating health care provider acting on behalf of the enrollee, the carrier or organized delivery system, and the commissioner.

8. The confidentiality of any medical records submitted shall be maintained pursuant to applicable state and federal laws.

2001 Acts, ch 69, §27
Section stricken and rewritten

514J.15 Penalties.

A carrier who fails to comply with this chapter or with rules adopted pursuant to this chapter is subject to the penalties provided under chapter 507B.

2001 Acts, ch 69, §28
NEW section

CHAPTER 514L

UNIFORM PRESCRIPTION DRUG INFORMATION CARD

514L.1 Definitions.

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

1. *“Guide”* means the most recent national council for prescription drug programs pharmacy identification card implementation guide, or its successor.

2. *“Prescription drug”* means prescription drug as defined in section 155A.3 and includes a device as defined in section 155A.3.

3. *“Provider of third-party payment or prepayment of prescription drug expenses”* or *“provider”* means a provider of an individual or group policy of accident or health insurance or an individual or group hospital or health care service contract issued pursuant to chapter 509, 514, or 514A, a provider of a plan established pursuant to chapter 509A for public employees, a provider of an individual or group health maintenance organization contract issued and regulated under chapter 514B, a provider of an organized delivery system contract regulated under rules adopted by the director of public health, a provider of a preferred provider contract issued pursuant to chapter 514F, a provider of a self-insured multiple employer welfare arrangement, and any other entity providing health insurance or health benefits which provide for payment or prepayment of prescription drug expenses coverage subject to state insurance regulation.

2001 Acts, ch 77, §1
NEW section

514L.2 Uniform prescription drug information cards.

1. *a.* A provider of third-party payment or prepayment of prescription drug expenses, including the provider’s agents or contractors and pharmacy benefits managers, that issues a card or other technology for claims processing and an administrator of the payor, excluding administrators of self-funded employer sponsored health benefit plans qualified under the federal Employee Retirement Income Security Act of 1974, shall issue to its insureds a card or other technology containing uniform prescription drug information. The commissioner of insurance shall adopt rules for the uniform prescription drug information card or technology applicable to those entities subject to regulation by the commissioner of insurance. The director of public health shall adopt rules for the uniform prescription drug information card or technology applicable to organized delivery systems. The rules shall require at least both of the following regarding the card or technology:

(1) With respect to the information required, be consistent with the guide, except that the ad-

dress of the pharmacy benefits manager shall not be required.

(2) With respect to the location of the information required, be substantially consistent with the guide.

b. Any information on the card shall be formatted and arranged in a manner that corresponds to the current content and format required by the provider for processing of claims.

2. A new uniform prescription drug information card or technology, as required pursuant to subsection 1, shall be issued by a provider of third-party payment or prepayment or the provider’s agents or contractors or pharmacy benefits managers upon enrollment and reissued upon any change in the insured’s coverage that impacts data contained on the card or technology. The commissioner of insurance shall review the national council for prescription drug programs implementation guide or successor document on an ongoing basis to determine changes, and shall modify or adopt rules as determined appropriate.

3. The card or other technology may be used for any health insurance or health benefits coverage and nothing in this chapter shall require a provider to issue a separate card for prescription drug coverage if the card or other technology can accommodate the information necessary to process claims.

4. This chapter shall not apply to prescription drug coverage provided through or in conjunction with any of the following:

a. Accident-only or disability income insurance coverage.

b. Hospital confinement indemnity coverage.

c. Coverage issued as a supplement to liability insurance.

d. Basic hospital and medical-surgical expense coverage.

e. Liability insurance, including general liability insurance and automobile liability insurance.

f. Workers’ compensation or similar insurance.

g. Automobile medical payment insurance.

h. Credit only insurance.

i. Coverage for on-site medical clinic care.

j. Dental or vision coverage.

k. Benefits for long-term care, nursing home care, or community-based care.

l. Short-term hospital, medical, or major medical coverage.

m. Medicare supplemental as defined pursuant to 42 U.S.C. § 1395ss(g)(1), coverage supplemental to the coverage provided under 10 U.S.C. § 1071-1109, and similar coverage that is supplemental to coverage under group health insurance

coverage as defined by the commissioner of insurance.

n. Any other similar limited benefits as defined by the commissioner of insurance.

2001 Acts, ch 77, §2
NEW section

514L.3 Application — enforcement.

1. A health insurance or health benefits policy

or contract issued and delivered, amended, or renewed on or after July 1, 2003, shall comply with this chapter.

2. The commissioner of insurance shall enforce this chapter and shall adopt rules necessary to implement this chapter.

2001 Acts, ch 77, §3
NEW section

CHAPTER 515

INSURANCE OTHER THAN LIFE

515.35 Investments.

1. *General considerations.* The following considerations apply in the interpretation of this section:

a. This section applies to the investments of insurance companies other than life insurance companies.

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 companies organized under this chapter. These standards, and the investment programs developed by companies, shall take into account the safety of the company's principal, investment yield and growth, stability in the value of the investment, and liquidity necessary to meet the company's expected business needs, and investment diversification.

c. Financial terms relating to insurance companies have the meanings assigned to them under statutory accounting methods. Financial terms relating to companies other than insurance companies 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, a company may elect to hold the investment under the subsection of its choice. This section does not prevent a company 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 immedi-

ately preceding the date the company acquires the investment.

b. "Clearing corporation" means as defined in section 554.8102.

c. "Custodian bank" means a bank or trust company that is supervised and examined by state or federal authority having supervision over banks and is acting as custodian for a clearing corporation.

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 Securities Exchange Act of 1934 or an exchange regulated under the laws of the Dominion 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 company or nominee and prohibitions.*

a. A company'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 cer-

tificate 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 company 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 company provides that adequate evidence of the deposit is to be obtained and retained by the company or a custodian bank.

(2) A company may loan stocks or obligations held by it under this chapter to a broker-dealer registered under the Securities Exchange Act of 1934 or 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, cash equivalents, 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.

If the loan is fully collateralized by cash, the reinvestment of the cash may be made in either individual securities or a pooled fund comprised of individual securities. If such reinvestment is made in individual securities, such securities must mature in less than ninety days. If such reinvestment is made in a pooled fund, the average maturity of the securities comprising such pooled fund must be less than ninety days. Individual securities and securities comprising the pooled fund shall be investment grade.

(b) That the loan may be terminated by the company at any time, and that the borrower will return the loaned stocks or obligations or equivalent stocks or obligations within five business days after termination.

(c) That the company 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 company due to default that are not covered by the collateral.

(3) A company 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 company or for specific accounts of the company.

(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 company or 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 company 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 certificate, if any, evidencing the company's investment.

b. Except as provided in paragraph "a", subparagraph (5), if an investment is not evidenced by a certificate, adequate evidence of the company's investment shall be obtained from the issuer or its transfer or recording agent and retained by the company, 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 company.

4. *Investments.* Except as otherwise permitted by this section, a company organized under this chapter may invest in the following and no other:

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. A company 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 of the United States, or a political subdivision of a state, or an instrumentality of a state or political subdivision of a state.

d. *Canadian government obligations.* Obligations issued or guaranteed by the Dominion of Canada, or by an agency or province of Canada, or by a political subdivision of a 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 of the United States, or the laws of Canada or a province of Canada, provided that a company shall not invest more than five percent of its admitted assets in the obligations of any one corporation or business trust.

Aggregate investments in below investment grade bonds shall not exceed five percent of assets.

f. Stocks. A company may invest in 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 of the United States, or the laws of Canada or a province of Canada.

(1) Stocks purchased under this section shall not exceed one hundred percent of capital and surplus. With the approval of the commissioner, a company may invest any amount in common stocks, preferred stocks, or other securities of one or more subsidiaries provided that after such investments the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(2) A company shall not invest more than ten percent of its capital and surplus in the stocks of any one corporation.

g. Real estate mortgages. Mortgages and other interest-bearing securities that are first liens upon real estate located within this state or any other state of the United States. However, a mortgage or other security does not qualify as an investment under this paragraph if at the date of acquisition the total indebtedness secured by the lien exceeds seventy-five percent of the value of the property that is subject to the lien. Improvements shall not be considered in estimating value unless the owner contracts to keep them insured during the life of the loan in one or more reliable fire insurance companies authorized to transact business in this state and for a sum at least equal to the excess of the loan above seventy-five percent of the value of the ground, exclusive of improvements, and unless this insurance is payable in case of loss to the company investing its funds as its interest may appear at the time of loss. For the purpose of this section, a lien upon real estate shall not be held or construed to be other than a first lien by reason of the fact that drainage or other improvement assessments have been levied against the real estate covered by the lien, whether or not the installment of the assessments have matured, but in determining the value of the real estate for loan purposes the amount of drainage or other assessment tax that is unpaid shall be first deducted.

h. Real estate.

(1) Except as provided in subparagraphs (2), (3), and (4) of this paragraph, a company may acquire, hold, and convey real estate only as follows:

(a) Real estate mortgaged to it in good faith as security for loans previously contracted, or for moneys due.

(b) Real estate conveyed to it in satisfaction of debts previously contracted in the course of its dealings.

(c) Real estate purchased at sales on judgments, decrees, or mortgages obtained or made for debts previously contracted in the course of its dealings.

(d) Real estate subject to a contract for deed under which the company holds the vendor's interest to secure the payments the vendee is required to make under the contract.

All real estate specified in subdivisions (a), (b), and (c) of this subparagraph shall be sold and disposed of within three years after the company acquires title to it, or within three years after the real estate ceases to be necessary for the accommodation of the company's business, and the company shall not hold any of those properties for a longer period unless the company elects to hold the property under another paragraph of this section, or unless the company procures a certificate from the commissioner of insurance that its interest will suffer materially by the forced sale of those properties and that the time for the sale is extended to the time the commissioner directs in the certificate.

(2) A company may acquire, hold, and convey real estate as required for the convenient accommodation and transaction of its business.

(3) A company may acquire real estate or an interest in real estate as an investment for the production of income, and may hold, improve, or otherwise develop, subdivide, lease, sell, and convey real estate so acquired directly or as a joint venture or through a limited or general partnership in which the company is a partner.

(4) A company may also acquire and hold real estate if the purpose of the acquisition is to enhance the sale value of real estate previously acquired and held by the company under this paragraph, and if the company expects the real estate so acquired to qualify under subparagraph (2) or (3) of this paragraph within three years after acquisition.

(5) A company may, after securing the written approval of the commissioner, acquire and hold real estate for the purpose of providing necessary living quarters for its employees. However, the company shall dispose of the real estate within three years after it has ceased to be necessary for that purpose unless the commissioner agrees to extend the holding period upon application by the company.

(6) A company shall not invest more than

twenty-five percent of its total admitted assets in real estate. The cost of a parcel of real estate held for both the accommodation of business and for the production of income shall be allocated between the two uses annually. A company shall not invest more than ten percent of its total admitted assets in real estate held under subparagraph (3) of this paragraph.

(7) A company is not required to divest itself of real estate assets owned or contracted for prior to July 1, 1982, in order to comply with the limitations established under this paragraph.

i. Foreign investments. Obligations of and investments in foreign countries, as follows:

(1) A company may acquire and hold other investments in foreign countries that are required to be held as a condition of doing business in those countries, so long as such investments are of substantially the same types as those eligible for investment under this section.

(2) A company shall not invest more than two percent of its admitted assets in the stocks or stock equivalents of foreign corporations or business trusts, other than the stocks or stock equivalents of foreign corporations or business trusts incorporated or formed under the laws of Canada, and then only if the stocks or stock equivalents of such foreign corporations or business trusts are regularly traded on the New York, London, Paris, Zurich, Hong Kong, Toronto, or Tokyo stock exchange, or a similar exchange approved by the commissioner by rule or order.

(3) A company may invest in the obligations of a foreign government other than Canada or of a corporation incorporated under the laws of a foreign government other than Canada. Any such governmental obligation must be valid, legally authorized and issued, and on the date of acquisition have predominantly investment qualities and characteristics as provided by rule. Any such corporate obligation must on the date of acquisition have investment qualities and characteristics, and must not have speculative elements which are predominant, as provided by rule. A company shall not invest more than two percent of its admitted assets in the obligations of a foreign government other than Canada. A company shall not invest more than two percent of its admitted assets in the obligations of a corporation incorporated under the laws of a foreign government other than a corporation incorporated under the laws of Canada.

(4) A company shall not invest more than ten percent of its admitted assets in foreign investments pursuant to this paragraph.

j. Personal property under lease. Personal property for intended lease or rental by the company in the United States or Canada. A company shall not invest more than five percent of its admitted assets under this paragraph.

k. Collateral loans. Obligations secured by the pledge of an investment authorized by para-

graphs "a" through "j", subject to the following conditions:

(1) The pledged investment shall be legally assigned or delivered to the company.

(2) The pledged investment shall at the time of purchase have a market value of at least one hundred ten percent of the amount of the unpaid balance of the obligations.

(3) The company shall reserve the right to declare the obligation immediately due and payable if at any time after purchase the security depreciates to the point where the investment would not qualify under subparagraph (2) of this paragraph. However, additional qualifying security may be pledged to allow the investment to remain qualified.

l. Options transactions.

(1) A domestic fire and casualty company may only engage in the following transactions in options on an exchange and only when in accordance with the rules of the exchange on which the transactions take place:

(a) The sale of exchange-traded covered options.

(b) The purchase of exchange-traded covered options solely in closing purchase transactions.

(2) The commissioner shall adopt rules pursuant to chapter 17A regulating option sales under this subparagraph.

m. Venture capital funds. Shares or equity interests in venture capital funds which agree to invest an amount equal to at least fifty percent of the investments by a company in small businesses having their principal offices within this state and having either more than one half of their assets within this state or more than one half of their employees employed within this state. A company shall not invest more than five percent of its capital and surplus under this paragraph. For purposes of this paragraph, "venture capital fund" means a corporation, partnership, proprietorship, or other entity formed under the laws of the United States, or a state, district, or territory of the United States, whose principal business is or will be the making of investments in, and the provision of significant managerial assistance to, small businesses which meet the small business administration definition of small business. "Equity interests" means limited partnership interests and other equity interests in which liability is limited to the amount of the investment, but does not mean general partnership interests or other interests involving general liability.

n. Other investments.

(1) A company organized under this chapter may invest up to five percent of its admitted assets in securities or property of any kind, without restrictions or limitations except those imposed on business corporations in general.

(2) A company organized under this chapter may invest its assets in any additional forms not specifically included in paragraphs "a" through "o"

when authorized by rules adopted by the commissioner.

o. Rules. The commissioner may adopt rules pursuant to chapter 17A to carry out the purposes and provisions of this section.

2001 Acts, ch 69, §29
Subsection 4, paragraph n, subparagraph (1) amended

515.51 Policies — execution — requirements.

All policies or contracts of insurance except surety bonds made or entered into by the company may be made either with or without the seal of the company, but shall be subscribed by the president, or such other officer as may be designated by the directors for that purpose, and be attested to by the secretary or the secretary's designee of the company. A group motor vehicle or group homeowners policy shall not be written or delivered within this state unless such policy is an individual policy or contract form.

2001 Acts, ch 69, §30
Section amended

515.122 Advertisements. Repealed by 2001 Acts, ch 69, § 37.

515.123 and 515.124 Repealed by 2001 Acts, ch 16, § 36, 37.

Repeal is effective January 1, 2002; 2001 Acts, ch 16, §37

515.125 Agency relationship.

Any officer, insurance producer, or representative of an insurance company doing business in this state who may solicit insurance, procure applications, issue policies, adjust losses, or transact the business generally of such companies, shall be held to be the agent of such insurance company with authority to transact all business within the scope of the agency relationship, anything in the application, policy, contract, bylaws, or articles of incorporation of such company to the contrary notwithstanding.

2001 Acts, ch 16, §9, 37
2001 amendment takes effect January 1, 2002; 2001 Acts, ch 16, §37
Section amended

515.126 Exceptions. Repealed by 2001 Acts, ch 16, § 36, 37.

Repeal is effective January 1, 2002; 2001 Acts, ch 16, §37

CHAPTER 515B

INSURANCE GUARANTY ASSOCIATION

515B.1 Scope.

This chapter shall apply to all kinds of direct insurance authorized to be written by an insurer licensed to operate in this state under chapter 515 or chapter 520, but shall not be applicable to the following:

1. Life, annuity, health, or disability insurance.
2. Mortgage guaranty, financial guaranty, residual value, or other forms of insurance offering protection against investment risks.
3. Fidelity or surety bonds, or any other bonding obligations.
4. Credit insurance, vendors' single interest insurance, or collateral protection insurance or any similar insurance protecting the interests of a creditor arising out of a creditor-debtor transaction.
5. Insurance warranties or service contracts, including insurance that provides for the repair, replacement, or service of goods or property, or indemnification for repair, replacement, or service, for the operational or structural failure of the goods or property due to a defect in materials, workmanship, or normal wear and tear, or provides reimbursement for the liability incurred by the issuer of agreements or service contracts that provide such benefits.
6. Title insurance.
7. Ocean marine insurance.

8. A transaction or combination of transactions between a person, including affiliates of such person, and an insurer, including affiliates of such insurer, which involves the transfer of investment or credit risk unaccompanied by transfer of insurance risk.

9. Insurance provided by or guaranteed by government.

2001 Acts, ch 69, §31
Subsection 2 amended

515B.2 Definitions.

As used in this chapter unless the context otherwise requires:

1. "Association" means the Iowa insurance guaranty association created pursuant to section 515B.3.
2. "Claimant" means an insured making a first party claim or any person instituting a liability claim against an insolvent insurer. "Claimant" does not include a person who is an affiliate of an insolvent insurer.
3. "Commissioner" means the commissioner of insurance of this state.
4. *a.* "Covered claim" means an unpaid claim, including one for unearned premiums, which arises out of and is within the coverage and is subject to the applicable limits of an insurance policy to which this chapter applies issued by an insurer, if such insurer becomes an insolvent insurer after

July 1, 1970, and one of the following conditions exists:

(1) The claimant or insured is a resident of this state at the time of the insured event. Other than an individual, the residence of the claimant or insured is the state in which its principal place of business is located.

(2) The claim is a first party claim by an insured for damage to property permanently located in this state.

b. "Covered claim" does not include any amount as follows:

(1) That is due any reinsurer, insurer, insurance pool, underwriting association, or other group assuming insurance risks, as subrogation, contribution, or indemnity recoveries, or otherwise.

(2) That constitutes the portion of a claim that is within an insured's deductible or self-insured retention.

(3) That is a claim for unearned premium calculated on a retrospective basis, experience-rated plan, or premium subject to adjustment after termination of the policy.

(4) That is due an attorney, adjuster, or witness as fees for services rendered to the insolvent insurer.

(5) That is a fine, penalty, interest, or punitive or exemplary damages.

(6) That constitutes a claim under a policy issued by an insolvent insurer with a deductible or self-insured retention of two hundred thousand dollars or more. However, such a claim shall be considered a covered claim, if as of the deadline set for the filing of claims against the insolvent insurer of its liquidator, the insured is a debtor under 11 U.S.C. § 701 et seq.

(7) That would otherwise be a covered claim, but is an obligation to or on behalf of a person who has a net worth, on the date of the occurrence giving rise to the claim, greater than that allowed by the guarantee fund law of the state of residence of the claimant, and which state has denied coverage to that claimant on that basis.

(8) That is an obligation owed to or on behalf of an affiliate of, as defined in section 521A.1, an insolvent insurer.

Notwithstanding the subparagraphs of this lettered paragraph, a person is not prevented from presenting a noncovered claim to the insolvent insurer or its liquidator, but the noncovered claim shall not be asserted against any other person, including the person to whom benefits were paid or the insured of the insolvent insurer, except to the extent that the claim is outside the coverage of the policy issued by the insolvent insurer.

5. "Insurer" means an insurer licensed to transact insurance business in this state under either chapter 515 or chapter 520, either at the time the policy was issued or when the insured event occurred. It does not include county or state mutual

insurance associations licensed under chapter 518 or chapter 518A, or fraternal benefit societies, orders, or associations licensed under chapter 512B, or corporations operating nonprofit service plans under chapter 514, or life insurance companies or life, accident, or health associations licensed under chapter 508, or those professions under chapter 519.

6. "Insolvent insurer" means an insurer against which a final order of liquidation with a finding of insolvency has been entered on or after July 1, 1980, by a court of competent jurisdiction of this state or of the state of the insurer's domicile.

7. "Net direct written premiums" means direct gross premiums written in this state on insurance policies to which this chapter applies, less return premiums and dividends paid or credited to policyholders on such direct business. Such term does not include premiums on contracts between insurers or reinsurers.

8. "Person" means any individual, corporation, partnership, association, or voluntary organization.

2001 Acts, ch 24, §55
Subsection 5 amended

515B.5 Duties and powers of the association.

1. The association shall:

a. Be obligated to pay covered claims existing prior to the final order of liquidation and arising within thirty days after the final order of liquidation, or before the policy expiration date if less than thirty days after the final order of liquidation, or before the insured replaces the policy or causes its cancellation, if the insured does so within thirty days of the final order of liquidation. Such obligation shall be satisfied by paying to the claimant an amount as follows:

(1) The full amount of a covered claim for benefits under a workers' compensation insurance coverage.

(2) An amount in excess of one hundred dollars but not exceeding ten thousand dollars per policy for a covered claim for the return of unearned premium.

(3) An amount not exceeding the lesser of the policy limits or three hundred thousand dollars per claim for all covered claims for all damages arising out of any one or series of accidents, occurrences, or incidents, regardless of the number of persons making claims or the number of applicable policies.

b. Be obligated to pay covered claims subject to a limitation as established by the rights, duties, and obligations under the policy of the insolvent insurer. However, the association is not obligated to pay a claimant an amount in excess of the obligation under the policy of the insolvent insurer, regardless of whether such claim is based on contract or tort.

c. Assess member insurers amounts necessary to pay the obligations of the association under paragraph "a" of this subsection subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, the cost of examinations under section 515B.10, and other expenses authorized by this chapter. The assessment of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the preceding calendar year bear to the net direct written premiums of all member insurers for the preceding calendar year. Each member insurer shall be notified of the assessment not later than thirty days before it is due. No member insurer may be assessed in any year an amount greater than two percent of that member insurer's net direct written premiums for the preceding calendar year. If the maximum assessment, together with the other assets of the association, does not provide in any one year an amount sufficient to make all necessary payments, the funds available shall be prorated and the unpaid portion shall be paid as soon as funds become available. The association may exempt or defer, in whole or in part, the assessment of any member insurer if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance. Each member insurer serving as a servicing facility pursuant to this section may set off against any assessment, authorized payments made on covered claims and expenses incurred in the payment of such claims by the member insurer. In addition, the association shall have the authority to levy an administrative assessment of not more than fifty dollars per year per member insurer on a non pro rata basis, which assessment shall be credited against any future insolvency assessment. Such assessment shall be used to pay authorized expenses not directly attributable to any particular insolvency or insolvent insurer. All overdue and unpaid assessments shall draw interest at the rate of seven percent per annum.

The association shall also have the right to pursue and retain for its own account salvage and subrogation recoverable on paid covered claim obligations. An obligation of the association to defend an insured shall cease upon the association's payment of an amount equal to the lesser of the association's covered claim obligation or the applicable policy limits.

d. Investigate claims brought against the fund and adjust, compromise, settle, defend and pay covered claims to the extent of the association's obligation and deny all other claims.

e. Notify such persons as the commissioner directs under section 515B.7, subsection 2, paragraph "a".

f. Process claims through its employees or through one or more member insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commissioner, but such designation may be declined by a member insurer.

g. Reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association, and pay the other expenses of the association authorized by this chapter.

2. The association may:

a. Appear in, defend, and appeal any action on a claim brought against the association.

b. Employ or retain persons necessary to handle claims and perform other duties of the association.

c. Borrow funds necessary to effect the purposes of this chapter in accord with the plan of operation.

d. Sue or be sued.

e. Negotiate and become a party to contracts necessary to carry out the purpose of this chapter.

f. Perform such other acts necessary or proper to effectuate the purposes of this chapter.

g. The board of directors, in its discretion, may from time to time refund excess amounts to member insurers that are not needed for current or projected liabilities of a particular insolvency. The amount of each refund is equal to the net direct written premiums of the member insurer for the preceding calendar year divided by the net written premiums of all member insurers for the preceding calendar year, multiplied by the total amount to be refunded to all members. Any assessments or refunds of any member insurer in amounts not to exceed twenty-five dollars may, at the discretion of the board of directors, be waived.

h. Request that all future payments of workers' compensation weekly benefits, medical expenses, or other payments under chapter 85, 85A, 85B, 86, or 87 be commuted to a present lump sum and upon the payment of which, either to the claimant or to a licensed insurer for purchase of an annuity or other periodic payment plan for the benefit of the claimant, the employer and the association shall be discharged from all further liability for the workers' compensation claim. Notwithstanding the provisions of section 85.45, any future payment of medical expenses, weekly compensation benefits, or other payment by the association under this chapter pursuant to chapter 85, 85A, 85B, 86, or 87, is deemed an undue expense, hardship, or inconvenience upon the employer for purposes of a full commutation pursuant to section 85.45, subsection 2, and the workers' compensation commissioner shall fix the lump sum of the probable future medical expenses and weekly compensation benefits capitalized at their present value upon the basis of interest at the rate pro-

vided in section 535.3 for court judgments and decrees.

2001 Acts, ch 69, §32
Subsection 1, paragraph b amended

515B.16 Actions against the association.

Any action against the association shall be brought against the association in the association's own name. The Polk county district court

shall have exclusive jurisdiction and venue of such actions. Service of the original notice in actions against the association may be made on any officer of the association or upon the commissioner of insurance on behalf of the association. The commissioner shall promptly transmit any notice so served upon the commissioner to the association.

2001 Acts, ch 69, §33
Section stricken and rewritten

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 mort-

gage, deed of trust, or other instrument constituting a lien or charge on real estate or on an owner-occupied manufactured or mobile home.

2001 Acts, ch 153, §15; 2001 Acts, ch 176, §80
Terminology change applied

CHAPTER 515F

CASUALTY INSURANCE

515F.4A Reasonableness of benefits in relation to premium charged.

Benefits provided by credit personal property insurance shall be reasonable in relation to the premium charged. This requirement is satisfied if the premium rate charged develops or may reasonably be expected to develop a loss ratio of not less than fifty percent or such lower loss ratio as designated by the commissioner to afford a reasonable allowance for actual and expected loss ex-

perience including a reasonable catastrophe provision, general and administrative expenses, reasonable acquisition expenses, reasonable creditor compensation, investment income, premium taxes, licenses, fees, assessments, and reasonable insurer profit.

2001 Acts, ch 69, §34, 39
Section is effective January 1, 2002; 2001 Acts, ch 69, §39
NEW section

CHAPTER 516A

UNINSURED, UNDERINSURED, OR HIT-AND-RUN MOTORISTS

516A.1 Coverage included in every liability policy — rejection by insured.

No automobile liability or motor vehicle liability insurance policy insuring against liability for bodily injury or death arising out of the ownership, maintenance, or use of a motor vehicle shall be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state, unless coverage is provided in such policy or supplemental thereto, for the protection of persons insured under such policy who are legally entitled to recover damages from the owner or operator of an uninsured motor vehicle or a hit-and-run motor vehicle or an under-

insured motor vehicle because of bodily injury, sickness, or disease, including death resulting therefrom, caused by accident and arising out of the ownership, maintenance, or use of such uninsured or underinsured motor vehicle, or arising out of physical contact of such hit-and-run motor vehicle with the person insured or with a motor vehicle which the person insured is occupying at the time of the accident. Both the uninsured motor vehicle or hit-and-run motor vehicle coverage, and the underinsured motor vehicle coverage shall include limits for bodily injury or death at least equal to those stated in section 321A.1, subsection 11. The form and provisions of such coverage shall

be examined and approved by the commissioner of insurance.

However, the named insured may reject all of such coverage, or reject the uninsured motor vehicle (hit-and-run motor vehicle) coverage, or reject the underinsured motor vehicle coverage, by written rejections signed by the named insured. If rejection is made on a form or document furnished by an insurance company or insurance producer, it shall be on a separate sheet of paper

which contains only the rejection and information directly related to it. Such coverage need not be provided in or supplemental to a renewal policy if the named insured has rejected the coverage in connection with a policy previously issued to the named insured by the same insurer.

2001 Acts, ch 16, §10, 37
 2001 amendment takes effect January 1, 2002; 2001 Acts, ch 16, §37
 Unnumbered paragraph 2 amended

CHAPTER 518

COUNTY MUTUAL INSURANCE ASSOCIATIONS

518.16 Soliciting application for insurance — license required.

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 insurance producer pursuant to chapter 522B.

2001 Acts, ch 118, §16
 Section amended

518.23 Cancellation or nonrenewal of policies — notice.

1. *Cancellation by insured.* A policy shall be canceled at any time at the request of the insured upon the return of the policy to the home office of the association, and the payment of all premium charges against such policy.

2. *Cancellation by association.*

a. Except as provided in paragraph “b”, notice of cancellation is not effective unless mailed or delivered by the association to the named insured at least twenty days before the effective date of cancellation.

b. Notice of cancellation resulting from nonpayment of a premium or installment provided for in the policy, or provided for in a note or contract for the payment of such premium or installment, is not effective unless mailed or delivered by the association to the named insured at least ten days prior to the date of cancellation.

c. If a notice of cancellation under paragraph “a” or “b” fails to include the reason for such cancellation, the association, upon receipt of a timely request by the named insured, shall provide in

writing the reason for the cancellation.

3. *Nonrenewal by association.* A notice of intention not to renew is not effective unless mailed or delivered by the insurer to the named insured at least thirty days prior to the expiration date of the policy. If the reason does not accompany the notice of nonrenewal, the association, upon receipt of a timely request by the named insured, shall provide the reason for the nonrenewal in writing.

4. *Notice.* Service of notice under subsection 2 or 3 may be delivered in person or mailed to the insured at the insured’s post office address as given in or upon the policy, or to such other address as the insured shall have given to the association in writing. A post office department certificate of mailing shall be deemed proof of receipt of such mailing. If in either case the cash payments exceed the amount properly chargeable, the excess shall be refunded to the insured upon the surrender of the policy to the association at its home office.

2001 Acts, ch 69, §35
 Subsection 4 amended

518.28 Failure to file copy.

Upon the failure of a county mutual insurance 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.

2001 Acts, ch 24, §56
 Section amended

CHAPTER 518A

STATE MUTUAL INSURANCE ASSOCIATIONS

518A.29 Cancellation or nonrenewal by association — notice.

1. *Cancellation by insured.* A policy shall be

canceled at any time at the request of the insured upon the return of the policy to the home office of the association and the payment of all premium

charges against such policy.

2. *Cancellation by association.*

a. Except as provided in paragraph "b", notice of cancellation is not effective unless mailed or delivered by the association to the named insured at least twenty days before the effective date of cancellation.

b. Notice of cancellation resulting from non-payment of a premium or installment provided for in the policy, or provided for in a note or contract for the payment of such premium or installment, is not effective unless mailed or delivered by the association to the named insured at least ten days prior to the date of cancellation.

c. If a notice of cancellation under paragraph "a" or "b" fails to include the reason for such cancellation, the association, upon receipt of a timely request by the named insured, shall provide the reason for the cancellation in writing.

3. *Nonrenewal by association.* A notice of intention not to renew is not effective unless mailed or delivered by the insurer to the named insured at least thirty days prior to the expiration date of the policy. If the reason does not accompany the notice of nonrenewal, the association, upon receipt of a timely request by the named insured, shall provide in writing the reason for the nonrenewal.

4. *Notice.* Service of notice under subsection 2 or 3 may be delivered in person or mailed to the insured at the insured's post office address as given in or upon the policy, or to such other address

as the insured shall have given to the association in writing. A post office department certificate of mailing shall be deemed proof of receipt of such mailing. If in either case the cash payments exceed the amount properly chargeable, the excess shall be refunded upon the surrender of the policy to the association at its home office.

2001 Acts, ch 69, §36
Subsection 4 amended

518A.35 Annual tax.

A state mutual insurance association doing business under this chapter shall on or before the first day of March, each year, pay to the director of the department of revenue and finance, or a depository designated by the director, a sum equivalent to two percent of the gross receipts from premiums and fees for business done within the state, including all insurance upon property situated in the state without including or deducting any amounts received or paid for reinsurance. However, a company reinsuring windstorm or hail risks written by county mutual insurance associations is required to pay a two percent tax on the gross amount of reinsurance premiums received upon such risks, but after deducting the amount returned upon canceled policies and rejected applications covering property situated within the state, and dividends returned to policyholders on property situated within the state.

2001 Acts, ch 24, §57
Section amended

CHAPTER 521A

INSURANCE HOLDING COMPANY SYSTEMS

521A.2 Subsidiaries of insurers.

1. *Authorization.* Any domestic insurer, either by itself or in cooperation with one or more persons, subject to the limitations set forth herein or elsewhere in this chapter, may organize or acquire one or more subsidiaries engaged or registered to engage in one or more of the following businesses or activities:

a. Any kind of insurance business authorized by the jurisdiction in which it is incorporated.

b. Acting as an insurance producer for its parent or for any of its parent's insurer subsidiaries or intermediate insurer subsidiaries.

c. Investing, reinvesting or trading in securities for its own account, that of its parent, any subsidiary of its parent, or any affiliate or subsidiary.

d. Management of any investment company subject to or registered pursuant to the Investment Company Act of 1940, as amended, including related sales and services.

e. Acting as a broker dealer subject to or registered pursuant to the Securities Exchange Act of

1934 as amended.

f. Rendering financial services or advice to individuals, governments, government agencies, corporations, or other organizations or groups.

g. Rendering other services related to the operations of an insurance business including, but not limited to, actuarial, loss prevention, safety engineering, data processing, accounting, claims, appraisal, and collection services.

h. Ownership and management of assets which the parent corporation could itself own and manage. However, the aggregate investment by the insurer and its subsidiaries acquired or organized pursuant to this paragraph shall not exceed the limitations applicable to the investments by the insurer.

i. Acting as administrative agent for a government instrumentality which is performing an insurance function.

j. Financing of insurance premiums, agents and other forms of consumer financing.

k. Any other business or service activity rea-

sonably ancillary to an insurance business.

l. Owning a corporation or corporations engaged or organized to engage exclusively in one or more of the businesses specified in paragraphs “a” to “k” inclusive.

2. *Exception.* Nothing contained in subsection 1 of this section shall prohibit a domestic insurer, either by itself or in cooperation with one or more persons, from investing amounts up to a total of ten percent of surplus in one or more subsidiaries or affiliates organized to do any lawful business.

3. *Additional investment authority.* In addition to investments in common stock, preferred stock, debt obligations and other securities permitted under all other sections of this subtitle, a domestic insurer may also:

a. Invest, in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, amounts which do not exceed the lesser of ten percent of the insurer’s assets or fifty percent of the insurer’s surplus as regards policyholders, if after the investments the insurer’s surplus as regards policyholders will be reasonable in relation to the insurer’s outstanding liabilities and adequate to its financial needs. In calculating the amount of the investments, investments in domestic or foreign insurance subsidiaries shall be excluded and both of the following shall be included:

(1) Total net moneys or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of such subsidiary whether or not represented by the purchase of capital stock or issuance of other securities.

(2) All amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities and all contributions to the capital or surplus, of a subsidiary subsequent to its acquisition or formation.

b. Invest any amount in common stock, preferred stock, debt obligations and other securities of one or more subsidiaries provided that each such subsidiary agrees to limit its investments in any asset so that such investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations specified in paragraph “a” of this subsection or in chapters 511, 515, 518A, and 520 applicable to the in-

surer. For the purpose of this paragraph, “total investment of the insurer” shall include both:

(1) Any direct investment by the insurer in an asset.

(2) The insurer’s proportionate share of any investment in an asset by any subsidiary of the insurer, which shall be calculated by multiplying the amount of the subsidiary’s investment by the percentage of the insurer’s ownership of such subsidiary.

c. With the approval of the commissioner, invest any greater amount in common stock, preferred stock, debt obligations, or other securities of one or more subsidiaries, if after the investment the insurer’s surplus as regards policyholders is reasonable in relation to the insurer’s outstanding liabilities and adequate to its financial needs.

4. *Exemption from investment restrictions.* Investments in common stock, preferred stock, debt obligations or other securities of subsidiaries made pursuant to subsection 3 of this section hereof shall not be subject to any of the otherwise applicable restrictions or prohibitions contained in the Code applicable to such investments of insurers.

5. *Qualification of investment — when determined.* Whether any investment pursuant to subsection 3 meets the applicable requirements of the subsection is to be determined before the investment is made by calculating the applicable investment limitations as though the investment had already been made, taking into account the then outstanding principal balance on all previous investments in debt obligations, and the value of all previous investments in equity securities as of the day they were made, net of any return of capital invested, excluding dividends.

6. *Cessation of control.* If an insurer ceases to control a subsidiary, it shall dispose of any investment therein made pursuant to this section within three years from the time of the cessation of control or within such further time as the commissioner may prescribe, unless at any time after such investment shall have been made, such investment shall have met the requirements for investment under any other section of the Code, and the insurer has notified the commissioner thereof.

2001 Acts, ch 16, §11, 37

2001 amendment to subsection 1, paragraph b, takes effect January 1, 2002; 2001 Acts, ch 16, §37

Subsection 1, paragraph b amended

CHAPTER 522

LICENSING OF INSURANCE AGENTS

Repealed by 2001 Acts, ch 16, §36, 37; see chapter 522B
 Repeal is effective January 1, 2002; 2001 Acts, ch 16, §37
 With respect to proposed amendment to former §522.1,
 see Code editor's note to §12.65

CHAPTER 522A

SALE OF INSURANCE BY VEHICLE RENTAL COMPANIES

522A.3 Limited licenses.

1. Notwithstanding the provisions of chapter 522B, the commissioner may issue a limited license to a rental company that has complied with the requirements of this chapter. The limited license shall authorize the limited licensee to offer or sell insurance with the rental of vehicles.

2. As a prerequisite for issuance of a limited license under this section, a written application for a limited license, which is signed by an officer of the applicant, shall be filed with the commissioner. The application shall be in a form and contain information prescribed by the commissioner. The application shall include a list of all rental locations where the rental company intends to conduct business. An updated list shall be provided to the commissioner within thirty business days from any date on which the list is amended.

3. If a provision of this section is violated by a limited licensee, the commissioner may, after notice and a hearing, revoke or suspend a limited license issued under this section, or impose any other penalties, including suspending permission for the transaction of insurance offers or sales at specific rental locations where violations of this section have occurred, as the commissioner deems to be necessary or convenient to carry out the purposes of this section.

4. A rental company licensed pursuant to this section may offer or sell insurance issued by an insurance carrier authorized to do business in this state and only in connection with and incidental to the rental of a vehicle. A renter shall not be required to purchase coverage in order to rent a vehicle. The type of insurance offered or sold by a limited licensee, whether at the rental office or by preselection of coverage in a master, corporate, group rental, or individual agreement, may be in any of the following general categories:

a. Personal accident insurance covering the risks of travel, including, but not limited to, accident and health insurance that provides coverage, as applicable, to a renter and other rental vehicle occupants for accidental death or dismemberment and reimbursement for medical expenses resulting from an accident that occurs during the rental period.

b. Liability insurance that provides coverage,

as applicable, to a renter and other authorized drivers of rental vehicles for liability arising from the operation of the rental vehicle.

c. Personal effects insurance that provides coverage, as applicable, to a renter and other vehicle occupants for the loss of, or damage to, personal effects that occurs during the rental period.

d. Roadside assistance and emergency sickness protection programs.

5. Insurance shall only be sold by a limited licensee pursuant to this section if all of the following apply:

a. The rental period of the rental agreement does not exceed ninety consecutive days.

b. At every rental location where a rental agreement is executed, brochures or other written materials are readily available to a prospective renter that include all of the following information:

(1) A clear and correct summary of the material terms of coverage offered to renters, including the identity of the insurer.

(2) A disclosure that the coverage offered by the rental company may provide a duplication of coverage already provided by a renter's personal automobile insurance policy, homeowner's insurance policy, personal liability insurance policy, or other source of coverage.

(3) A statement that the purchase by a renter of the types of coverage specified in this section is not required in order to rent a vehicle.

(4) A description of the process for filing a claim in the event a renter elects to purchase coverage and in the event of a claim.

c. Evidence of coverage in the rental agreement is provided to every renter who elects to purchase such coverage.

d. A fee, compensation, or commission is not paid to an employee by a rental company dependent solely on the sale of insurance under any limited license issued pursuant to this section.

6. Any limited license issued under this section shall authorize a counter employee of the limited licensee to act individually on behalf, and under the supervision, of the limited licensee with respect to the offer and sale of coverage specified in this section.

7. A rental company counter employee must

successfully pass an examination covering the insurance products offered for sale by the rental company in connection with and incidental to the rental of vehicles by the rental company. The examination shall be approved and administered by the insurance division or a vendor approved by the insurance division pursuant to section 522A.6. The counter employee shall file an application with the commissioner for an individual license. Any application shall be deemed approved unless the commissioner notifies the rental company of the denial or rejection of the application within thirty days of receiving the application. An application shall not include requirements greater in scope than defined in this section.

8. A limited licensee pursuant to this section shall not be required to treat moneys collected from renters purchasing insurance when renting vehicles as moneys received in a fiduciary capacity, provided that the charges for coverage are itemized and are ancillary to a rental agreement. The offer or sale of insurance not in conjunction

with a rental agreement shall not be permitted.

9. A limited licensee under this section shall not advertise, represent, or otherwise hold itself out or hold any of its employees out as licensed insurers, insurance agents, or insurance brokers.

10. A limited licensee shall not engage in this state in any of the following:

a. A trade practice defined in chapter 507B as, or determined pursuant to section 507B.6 to be, an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

b. An illegal sales practice or unfair trade practice as defined in rules adopted pursuant to chapter 17A by the commissioner.

11. An individual license, authorization, and certification to offer or sell insurance products under this chapter shall expire when the counter employee's employment terminates with the rental company.

2001 Acts, ch 16, §12, 37
2001 amendment to subsection 1 takes effect January 1, 2002; 2001 Acts, ch 16, §37
Subsection 1 amended

CHAPTER 522B

LICENSING OF INSURANCE PRODUCERS

Chapter takes effect January 1, 2002; 2001 Acts, ch 16, §37

522B.1 Definitions.

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

1. "*Business entity*" means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.

2. "*Commissioner*" means the commissioner of insurance.

3. "*Home state*" means the District of Columbia and any state or territory of the United States in which an insurance producer maintains the producer's principal place of residence or principal place of business and is licensed to act as an insurance producer.

4. "*Insurance*" means any of the lines of authority an insurer is authorized to sell in this state.

5. "*Insurance producer*" means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance.

6. "*Insurer*" means a person engaged in the business of insurance who is licensed under chapter 508, 512B, 515, or 520.

7. "*License*" means a document issued pursuant to this chapter by the commissioner authorizing a person to act as an insurance producer for the lines of authority specified in the document. A license by itself does not create any authority, actual, apparent, or inherent, in the holder to represent or commit an insurer.

8. "*Limited lines insurance*" means any au-

thority granted by the home state which restricts the authority of the license to less than the total authority prescribed in the associated major lines pursuant to section 522B.6, subsection 2, paragraphs "a" through "f", and any other line of insurance that the commissioner may deem it necessary to recognize for the purposes of complying with section 522B.7, subsection 4.

9. "*Limited lines producer*" means a person authorized by the commissioner to sell, solicit, or negotiate limited lines insurance.

10. "*Negotiate*" means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract, provided that the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers.

11. "*Person*" means an individual or a business entity.

12. "*Producer database*" means the national database of insurance producers maintained by the national association of insurance commissioners, its affiliates, or subsidiaries.

13. "*Sell*" means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurer.

14. "*Solicit*" or "*solicitation*" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a

particular company.

15. “*Terminate*” means the cancellation of the relationship between an insurance producer and the insurer or the termination of an insurance producer’s authority to transact insurance.

16. “*Uniform application*” means the current version of the national association of insurance commissioners uniform application for resident and nonresident insurance producer licensing.

17. “*Uniform business entity application*” means the current version of the national association of insurance commissioners uniform business entity application for resident and nonresident business entities.

2001 Acts, ch 16, §15, 37
Section is effective January 1, 2002; 2001 Acts, ch 16, §37
NEW section

522B.2 License required.

1. A person shall not sell, solicit, or negotiate insurance in this state for any line of insurance unless the person is licensed as an insurance producer for that line of insurance as provided in this chapter.

2. A person offering to the public, for a fee or commission, to engage in the business of offering any advice, counsel, or service with respect to the benefits, advantages, or disadvantages promised under any policy of insurance must also be licensed as an insurance producer.

2001 Acts, ch 16, §16, 37
Section is effective January 1, 2002; 2001 Acts, ch 16, §37
NEW section

522B.3 Exceptions to licensing.

1. Nothing in this chapter shall be construed to require an insurer to obtain an insurance producer license. For the purposes of this section, “*insurer*” does not mean an officer, director, employee, subsidiary, or affiliate of the insurer.

2. A license as an insurance producer shall not be required of any the following:

a. An officer, director, or employee of an insurer or of an insurance producer, provided that the officer, director, or employee does not receive any commission on policies written or sold to insure risks residing, located, or to be performed in this state, and one of the following applies:

(1) The activities of the officer, director, or employee are executive, administrative, managerial, clerical, or a combination of these, and are only indirectly related to the sale, solicitation, or negotiation of insurance.

(2) The function of the officer, director, or employee relates to underwriting, loss control, inspection, or the processing, adjusting, investigating, or settling of a claim on a contract of insurance.

(3) The officer, director, or employee is acting in the capacity of a special agent or agency supervisor assisting insurance producers where the person’s activities are limited to providing technical advice and assistance to licensed insurance

producers and do not include the sale, solicitation, or negotiation of insurance.

b. A person who performs any of the following services and who is not paid a commission for the performance of such service:

(1) Secures and furnishes information for the purpose of group life insurance, group property and casualty insurance, group annuities, group or blanket accident and health insurance.

(2) Secures and furnishes information for the purpose of enrolling individuals under plans, issuing certificates under plans, or otherwise assisting in administering plans.

(3) Performs administrative services related to mass marketed property and casualty insurance.

c. An employer or association, or an officer, director, or employee of such employer or association, or the trustees of an employee trust plan, to the extent that such employer, association, officer, director, employee, or trustee is engaged in the administration or operation of a program of employee benefits for the employer’s or association’s own employees or the employees of its subsidiaries or affiliates, which program involves the use of insurance issued by an insurer, as long as such employer, association, officer, director, employee, or trustee is not in any manner compensated, directly or indirectly, by the insurer issuing the contracts.

d. An employee of an insurer, or an organization employed by an insurer, who engages in the inspection, rating, or classification of risks or in the supervision of the training of insurance producers and who is not individually engaged in the sale, solicitation, or negotiation of insurance.

e. A person whose activities in this state are limited to advertising without the intent to solicit insurance in this state through communications in printed publications or other forms of electronic mass media whose distribution is not limited to residents of the state, provided that the person does not sell, solicit, or negotiate insurance that would insure risks residing, located, or to be performed in this state.

f. A person who is not a resident of this state who sells, solicits, or negotiates a contract of insurance for commercial property and casualty risks to an insured with risks located in more than one state insured under that contract, provided that that person is otherwise licensed as an insurance producer to sell, solicit, or negotiate that insurance in the state where the insured maintains its principal place of business and the contract of insurance insures risks located in that state.

g. A salaried full-time employee who counsels or advises the employee’s employer relative to the insurance interests of the employer or of the subsidiaries or business affiliates of the employer, provided that the employee does not sell or solicit insurance or receive a commission.

h. A licensed attorney providing surety bonds incident to the attorney’s practice.

i. A person selling transportation tickets of a common carrier of persons or property when that person also sells, in connection with and related to the transportation ticket, a trip and accident insurance policy or an insurance policy on personal effects being carried as baggage.

2001 Acts, ch 16, §17, 37

See also §522A.3

Section is effective January 1, 2002; 2001 Acts, ch 16, §37

NEW section

522B.4 Application for examination.

1. A resident individual applying for an insurance producer license shall pass a written examination unless exempt pursuant to section 522B.8. The examination shall test the knowledge of the individual concerning the lines of authority for which application is made, the duties and responsibilities of an insurance producer, and the insurance laws and regulations of this state. The commissioner shall adopt rules pursuant to chapter 17A related to development and conduct of the examination.

2. The commissioner may make arrangements, including contracting with an outside testing service or other appropriate entity, for administering examinations and collecting fees.

3. An individual applying for an examination shall remit a nonrefundable fee as established by rule of the commissioner.

4. An individual who fails to appear for the examination as scheduled or fails to pass the examination shall reapply for an examination and remit all required fees and forms before being rescheduled for another examination.

2001 Acts, ch 16, §18, 37

Section is effective January 1, 2002; 2001 Acts, ch 16, §37

NEW section

522B.5 Application for license.

1. A person applying for a resident insurance producer license shall make application to the commissioner on the uniform application and declare under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner shall find all of the following:

a. The individual is at least eighteen years of age.

b. The individual has not committed any act that is a ground for denial, suspension, or revocation as set forth in section 522B.11.

c. The individual has paid the license fee of fifty dollars.

d. The individual has successfully passed the examinations for the lines of authority for which the person has applied.

e. In order to protect the public interest, the individual has the requisite character and competence to receive a license as an insurance producer.

2. A business entity acting as an insurance

producer may elect to obtain an insurance producer license. Application shall be made using the uniform business entity application. Prior to approving the application, the commissioner shall find both of the following:

a. The business entity has paid the appropriate fees.

b. The business entity has designated a licensed producer responsible for the business entity's compliance with the insurance laws and rules of this state.

3. The commissioner may require any documents reasonably necessary to verify the information contained in an application.

2001 Acts, ch 16, §19, 37

Section is effective January 1, 2002; 2001 Acts, ch 16, §37

NEW section

522B.6 License.

1. A person who meets the requirements of sections 522B.4 and 522B.5, unless otherwise denied licensure pursuant to section 522B.11, shall be issued an insurance producer license. An insurance producer license is valid for three years.

2. An insurance producer may qualify for a license in one or more of the following lines of authority:

a. Life insurance providing coverage on human lives, including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income.

b. Accident and health or sickness insurance providing coverage for sickness, bodily injury, or accidental death, and may include benefits for disability income.

c. Property insurance providing coverage for the direct or consequential loss or damage to property of any kind.

d. Casualty insurance providing coverage against legal liability, including that for death, injury, or disability, or damage to real or personal property.

e. Variable life and variable annuity products insurance providing coverage provided under variable life insurance contracts and variable annuities.

f. Personal lines property and casualty insurance sold to individuals and families primarily for noncommercial purposes.

g. Excess and surplus lines insurance provided by certain nonadmitted insurers pursuant to section 515.147.

h. Credit insurance, including credit life, credit disability, credit property, credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability, guaranteed automobile protection insurance, and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing a credit obligation and that the commissioner determines should be desig-

nated a form of credit insurance.

i. Any other line of insurance permitted under state law or by rule.

3. An insurance producer license remains in effect unless revoked or suspended as long as all required fees are paid and continuing education requirements for resident individual insurance producers are met by any applicable due date.

4. An individual insurance producer who allows the producer's license to lapse, within twelve months from the due date of the renewal fee, may have the same license reinstated without the necessity of passing a written examination upon the payment of a reinstatement fee as specified by rule of the commissioner. Such reinstatement fee shall be in addition to the required renewal fee.

5. A licensed insurance producer who is unable to comply with license renewal procedures due to military service or some other extenuating circumstance may request a waiver of those procedures. Such insurance producer may also request a waiver of any examination requirement or any other penalty or sanction imposed for failure to comply with renewal procedures.

6. The license shall contain the licensee's name, address, personal identification number, and the date of issuance, the lines of authority, the expiration date, and any other information the commissioner deems necessary.

7. A licensee shall inform the commissioner by any means acceptable to the commissioner of a change of address within thirty days of the change. Failure to timely inform the commissioner of a change in legal name or address may result in a penalty as specified in section 522B.17.

8. In order to assist with the commissioner's duties, the commissioner may contract with a non-governmental entity, including the national association of insurance commissioners or any affiliate or subsidiary the national association of insurance commissioners oversees, to perform any ministerial functions, including the collection of fees, related to producer licensing that the commissioner deems appropriate.

2001 Acts, ch 16, §20, 37

Section is effective January 1, 2002; 2001 Acts, ch 16, §37

NEW section

522B.7 Nonresident licensing.

1. Unless denied licensure pursuant to section 522B.11, a nonresident person shall receive a nonresident insurance producer license if all of the following apply:

a. The person is currently licensed as an insurance producer and is in good standing in the person's home state.

b. The person has submitted the proper request for licensure and has paid the required fees.

c. The person has submitted or transmitted to the commissioner the application for licensure that the person submitted to the person's home state, or in lieu of such application, a completed

uniform application.

d. The person's home state awards nonresident insurance producer licenses to residents of this state on the same basis.

2. The commissioner may verify the insurance producer's licensing status through the producer database.

3. A nonresident insurance producer who moves from one state to another state or a resident insurance producer who moves from this state to another state shall file a change of address and provide certification from the new resident state within thirty days of the change of legal residence. No fee or license application is required. The certification may be obtained through the producer database.

4. Notwithstanding any other provision of this chapter, a person licensed as a limited lines insurance producer in the person's home state shall receive a nonresident limited lines insurance producer license, pursuant to subsection 1, granting the same scope of authority as granted under the license issued by such person's home state.

2001 Acts, ch 16, §21, 37

Section is effective January 1, 2002; 2001 Acts, ch 16, §37

NEW section

522B.8 Exemption from examination.

1. An individual who applies for an insurance producer license in this state who was previously licensed for the same lines of authority in another state shall not be required to complete an examination. This exemption is only available if the person is currently licensed in that other state or if the request for licensure is received within ninety days of the cancellation of the applicant's previous license and if the prior state issues a certification that, at the time of cancellation, the applicant was in good standing in that state. The certification may be obtained through the producer database.

2. A person licensed as an insurance producer in another state who moves to this state shall make application within ninety days of establishing legal residence to become a resident licensee pursuant to section 522B.5. An examination shall not be required of that person to obtain an insurance producer license for any line of authority previously held in the prior state except where the commissioner determines otherwise by regulation.

2001 Acts, ch 16, §22, 37

Section is effective January 1, 2002; 2001 Acts, ch 16, §37

NEW section

522B.9 Assumed names.

An insurance producer doing business under any name other than the insurance producer's legal name is required to notify the commissioner prior to using the assumed name.

2001 Acts, ch 16, §23, 37

Section is effective January 1, 2002; 2001 Acts, ch 16, §37

NEW section

522B.10 Temporary licensing.

1. The commissioner may issue a temporary insurance producer license for a period not to exceed one hundred eighty days without requiring an examination if the commissioner deems that the temporary license is necessary for the servicing of an insurance business in the following cases:

a. To the surviving spouse or court-appointed personal representative of a licensed insurance producer who dies or becomes mentally or physically disabled, to allow adequate time for the sale of the insurance business owned by the insurance producer, for the recovery or return of the insurance producer to the business, or for the training and licensing of new personnel to operate the insurance producer's business.

b. To a member or employee of a business entity licensed as an insurance producer, upon the death or disability of an individual designated in the business entity application or the license.

c. To the designee of a licensed insurance producer entering active service in the armed forces of the United States.

d. In any other circumstance where the commissioner deems that the public interest will best be served by the issuance of a temporary license.

2. The commissioner may by order limit the authority of any temporary licensee in any way deemed necessary to protect insureds and the public. The commissioner may require the temporary licensee to have a suitable sponsor who is a licensed insurance producer or insurer and who assumes responsibility for all acts of the temporary licensee and may impose other similar requirements designed to protect insureds and the public. The commissioner may by order revoke a temporary license if the interest of insureds or the public is endangered. A temporary license shall not continue after the owner or the personal representative disposes of the business.

2001 Acts, ch 16, §24, 37

Section is effective January 1, 2002; 2001 Acts, ch 16, §37

NEW section

522B.11 License denial, nonrenewal, or revocation.

1. The commissioner may place on probation, suspend, revoke, or refuse to issue or renew an insurance producer's license or may levy a civil penalty as provided in section 522B.17 for any one or more of the following causes:

a. Providing incorrect, misleading, incomplete, or materially untrue information in the license application.

b. Violating any insurance laws, or violating any regulation, subpoena, or order of the commissioner or of a commissioner of another state.

c. Obtaining or attempting to obtain a license through misrepresentation or fraud.

d. Improperly withholding, misappropriating, or converting any moneys or properties received in

the course of doing insurance business.

e. Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance.

f. Having been convicted of a felony.

g. Having admitted or been found to have committed any unfair insurance trade practice or fraud.

h. Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.

i. Having an insurance producer license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory.

j. Forging another's name to an application for insurance or to any document related to an insurance transaction.

k. Improperly using notes or any other reference material to complete an examination for an insurance license.

l. Knowingly accepting insurance business from an individual who is not licensed.

m. Failing to comply with an administrative or court order imposing a child support obligation.

n. Failing to comply with an administrative or court order related to repayment of loans to the college student aid commission.

o. Failing to pay state income tax or comply with any administrative or court order directing payment of state income tax.

p. Failing or refusing to cooperate in an investigation by the commissioner.

2. If the commissioner does not renew a license or denies an application for a license, the commissioner shall notify the applicant or licensee and advise, in writing, the licensee or applicant of the reason for the nonrenewal of the license or denial of the application for a license. The licensee or applicant may request a hearing on the nonrenewal or denial. A hearing shall be conducted according to section 507B.6.

3. The license of a business entity may be suspended, revoked, or refused if the commissioner finds, after hearing, that an individual licensee's violation was known or should have been known by a partner, officer, or manager acting on behalf of the business entity and the violation was not reported to the commissioner and corrective action was not taken.

4. In addition to, or in lieu of, any applicable denial, suspension, or revocation of a license, a person, after hearing, may be subject to a civil penalty as provided in section 522B.17.

5. The commissioner may enforce the provisions and impose any penalty or remedy authorized by this chapter and chapter 507B against any person who is under investigation for, or charged with, a violation of either chapter even if the person's license has been surrendered or has

lapsed by operation of law.

2001 Acts, ch 16, §25, 37
Section is effective January 1, 2002; 2001 Acts, ch 16, §37
NEW section

522B.12 Commissions.

1. An insurer or insurance producer shall not pay a commission, service fee, brokerage, or other valuable consideration to a person for selling, soliciting, or negotiating insurance in this state if that person is required to be licensed under this chapter and is not so licensed.

2. A person shall not accept a commission, service fee, brokerage, or other valuable consideration for selling, soliciting, or negotiating insurance in this state if that person is required to be licensed under this chapter and is not so licensed.

3. Renewal or other deferred commissions may be paid to a person for selling, soliciting, or negotiating insurance in this state if the person was required to be licensed under this chapter at the time of the sale, solicitation, or negotiation and was so licensed at that time.

4. An insurer or insurance producer may pay or assign a commission, service fee, brokerage, or other valuable consideration to an insurance agency or to a person who does not sell, solicit, or negotiate insurance in this state, unless the payment would violate chapter 507B or section 515.130.

2001 Acts, ch 16, §26, 37
Section is effective January 1, 2002; 2001 Acts, ch 16, §37
NEW section

522B.13 Appointments.

1. An individual insurance producer who acts as an agent of an insurer must be appointed by that insurer. An insurance producer who is not acting as an agent of an insurer need not be appointed. A business entity is not required to be appointed.

2. The appointing insurer, for the purpose of appointing an insurance producer as its agent, shall file, in a format approved by the commissioner, a notice of appointment within thirty days from the date the agency contract is executed or the first insurance application is submitted.

3. An insurer shall pay an appointment fee, in the amount and method of payment set forth by rule of the commissioner, for each insurance producer appointed by the insurer.

4. An insurer shall remit a renewal appointment fee in the manner and amount as set forth by rule of the commissioner.

2001 Acts, ch 16, §27, 37
Section is effective January 1, 2002; 2001 Acts, ch 16, §37
NEW section

522B.14 Notification to commissioner of termination — penalties.

1. An insurer or authorized representative of the insurer that terminates the appointment, employment, contract, or other insurance business

relationship with an insurance producer shall notify the commissioner within thirty days following the effective date of the termination, using a format prescribed by the commissioner, if the reason for termination is one of the reasons set forth in section 522B.11, or the insurer has knowledge the insurance producer was found by a court, government body, or self-regulatory organization authorized by law to have engaged in any of the activities set forth in section 522B.11. Upon request of the commissioner, the insurer or authorized representative of the insurer shall provide additional information, documents, records, or other data pertaining to the termination or activity of the insurance producer.

2. An insurer or authorized representative of the insurer that terminates the appointment, employment, contract, or other insurance business relationship with an insurance producer for any reason not set forth in section 522B.11 shall notify the commissioner within thirty days following the effective date of the termination, using a format prescribed by the commissioner. Upon request of the commissioner, the insurer shall provide additional information, documents, records, or other data pertaining to the termination.

3. The insurer or the authorized representative of the insurer shall promptly notify the commissioner using a format prescribed by the commissioner if, upon further review or investigation, the insurer or authorized representative of the insurer discovers additional information that would have been reportable to the commissioner pursuant to subsection 1, had the insurer then known of its existence.

4. Within fifteen days after making the notification required by this section, the insurer shall mail a copy of the notification to the insurance producer at the insurance producer's last known address. If the insurance producer is terminated for any of the reasons set forth in section 522B.11, the insurer shall provide a copy of the notification to the insurance producer at the insurance producer's last known address by restricted certified mail, as defined in section 618.15, or by overnight delivery using a nationally recognized carrier.

5. Within thirty days after the insurance producer has received the original or additional notification, the insurance producer may file written comments concerning the substance of the notification with the commissioner. The insurance producer, by the same means, shall simultaneously send a copy of the comments to the reporting insurer, and the comments shall become a part of the commissioner's record and accompany every copy of a report distributed or disclosed for any reason about the insurance producer, as permitted under subsection 8.

6. In the absence of actual malice, an insurer, the authorized representative of the insurer, an insurance producer, the commissioner, or an orga-

nization of which the commissioner is a member and that compiles the information and makes it available to other commissioners or regulatory or law enforcement agencies shall not be subject to civil liability. A civil cause of action of any nature shall not arise against any of these entities or their respective agents or employees, as a result of any statement or information required by or provided pursuant to this section or any information relating to any statement that may be requested in writing by the commissioner from an insurer or insurance producer; or a statement by a terminating insurer or insurance producer to an insurer or insurance producer limited solely and exclusively to whether a termination for cause under subsection 1 was reported to the commissioner, provided that the propriety of any termination for cause under subsection 1 is certified in writing by an officer or authorized representative of the insurer or insurance producer terminating the relationship.

In any action brought against a person that may have immunity under this section for making any statement required by this section or providing any information relating to any statement that may be requested by the commissioner, the party bringing the action shall plead specifically in any allegation that this section does not apply because the person making the statement or providing the information did so with actual malice. This section shall not abrogate or modify any existing statutory or common law privileges or immunities.

7. Any document, material, or other information in the control or possession of the insurance division that is furnished by an insurer, insurance producer, or an employee or agent of such insurer or insurance producer acting on behalf of the insurer or insurance producer, or obtained by the commissioner in an investigation pursuant to this section is considered a confidential record and shall not be subject to subpoena, or subject to discovery, or admissible in evidence in any private civil action. However, the commissioner is authorized to use such document, material, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's duties.

Neither the commissioner nor any person who received any document, material, or other information while acting under the authority of the commissioner shall be permitted or required to testify in any private civil action concerning any confidential document, material, or information subject to this section.

8. The commissioner may share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsection 7, with other state, federal, and international regulatory agencies, with the national association of insurance commissioners, its affiliates or subsidiaries, and with state, federal, and international law enforce-

ment authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information.

The commissioner may receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the national association of insurance commissioners, its affiliates or subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information.

The commissioner may enter into agreements governing sharing and use of information consistent with this subsection.

9. A waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall not occur as a result of disclosure to the commissioner or sharing of information received under this section.

10. Nothing in this chapter shall prohibit the commissioner from releasing information regarding final, adjudicated actions that are considered public records subject to examination and copying under chapter 22 to a database or other clearinghouse service maintained by the national association of insurance commissioners, or an affiliate or subsidiary of the national association of insurance commissioners.

11. An insurer, the authorized representative of the insurer, or an insurance producer that fails to report as required under this section, or that is found to have reported with actual malice by a court of competent jurisdiction, after notice and hearing, may have its license or certificate of authority suspended or revoked and may be penalized as provided in section 522B.17.

2001 Acts, ch 16, §28, 37; 2001 Acts, ch 176, §72
Section is effective January 1, 2002; 2001 Acts, ch 16, §37
NEW section

522B.15 Reciprocity.

1. The commissioner shall waive any requirements for a nonresident license applicant with a valid license from such applicant's home state, except for the requirements imposed by section 522B.7, if the applicant's home state awards nonresident licenses to residents of this state on the same basis.

2. A nonresident insurance producer's satisfaction of the producer's home state's continuing education requirements for licensed insurance producers shall constitute satisfaction of this state's continuing education requirements if the nonresident insurance producer's home state recognizes the satisfaction of its continuing education requirements imposed upon insurance pro-

ducers from this state on the same basis.

2001 Acts, ch 16, §29, 37
Section is effective January 1, 2002; 2001 Acts, ch 16, §37
NEW section

522B.16 Reporting of actions.

An insurance producer shall report to the commissioner any administrative action taken against the insurance producer in another jurisdiction or by another governmental agency in this state within thirty days of the final disposition of the matter. This report shall include a copy of the order, consent to the order, or other relevant legal documents.

Within thirty days of the initial pretrial hearing date, an insurance producer shall report to the commissioner any criminal prosecution of the insurance producer taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal documents.

2001 Acts, ch 16, §30, 37
Section is effective January 1, 2002; 2001 Acts, ch 16, §37
NEW section

522B.17 Penalty.

An insurer or insurance producer who, after hearing, is found to have violated this chapter may be assessed a civil penalty pursuant to chapter 507B.

A person found, after hearing, to have acted as an agent of an insurer or otherwise selling, soliciting, or negotiating insurance in this state, or offering to the public advice, counsel, or services with regard to insurance, who is not properly licensed is subject to penalty according to the provisions of chapter 507A.

2001 Acts, ch 16, §31, 37
Section is effective January 1, 2002; 2001 Acts, ch 16, §37
NEW section

522B.18 Rules.

The commissioner may adopt reasonable rules according to chapter 17A as are necessary or proper to carry out the purposes of this chapter.

2001 Acts, ch 16, §32, 37
Section is effective January 1, 2002; 2001 Acts, ch 16, §37
NEW section

CHAPTER 523A

CEMETERY AND FUNERAL MERCHANDISE AND FUNERAL SERVICES

This chapter replaces former chapter 523A, repealed effective July 1, 2001; 2001 Acts, ch 118, §17 – 54, 57

SUBCHAPTER I

SHORT TITLE AND DEFINITIONS

523A.101 Short title.

This chapter may be cited as the “*Iowa Cemetery and Funeral Merchandise and Funeral Services Act*”.

2001 Acts, ch 118, §17
NEW section

523A.102 Definitions.

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

1. “*Authorized to do business within this state*” means a person licensed, registered, or subject to regulation by an agency of the state of Iowa or who has filed a consent to service of process with the commissioner for purposes of this chapter.

2. “*Beneficiary*” means any natural person specified or included in a purchase agreement, upon whose future death cemetery merchandise, funeral merchandise, funeral services, or a combination thereof are to be provided under the purchase agreement.

3. “*Burial account*” means an account established by a person with a financial institution for the purpose of funding the future purchase of cemetery merchandise, funeral merchandise, or a

combination thereof without any related trust agreement.

4. “*Burial trust fund*” means an irrevocable burial trust fund established by a person with a financial institution for the purpose of funding the future purchase of cemetery merchandise, funeral merchandise, funeral services, or a combination thereof upon the death of the person named in the burial trust fund’s records or a related purchase agreement. “*Burial trust fund*” does not include or imply the existence of any oral or written purchase agreement for cemetery merchandise, funeral merchandise, funeral services, or a combination thereof between the person and a seller.

5. “*Cemetery merchandise*” means foundations, grave markers, tombstones, ornamental merchandise, memorials, and monuments sold under a purchase agreement that does not require installation within twelve months of the purchase.

6. “*Commissioner*” means the commissioner of insurance or the deputy administrator authorized in section 523A.801 to the extent the commissioner delegates functions to the deputy administrator.

7. “*Common business enterprise*” means a group of two or more business entities that share common ownership in excess of fifty percent.

8. “*Credit sale*” means a sale of goods, services,

or an interest in land in which all of the following are applicable:

a. Credit is granted either under a seller credit card or by a seller who regularly engages as a seller in credit transactions of the same kind.

b. The buyer is a person other than an organization.

c. The goods, services, or interest in land are purchased primarily for a personal, family, or household purpose.

d. Either the debt is payable in installments or a finance charge is made.

e. For goods and services, the amount financed does not exceed twenty-five thousand dollars.

9. "Delivery" occurs when:

a. The cemetery merchandise, funeral merchandise, or the title document establishing an easement for burial rights is physically delivered to the purchaser or installed, except that burial of any item at the site of its ultimate use shall not constitute delivery for purposes of this chapter.

b. If authorized by a purchaser under a purchase agreement, cemetery merchandise has been permanently identified with the name of the purchaser or the beneficiary and delivered to a bonded warehouse or storage facility approved by the commissioner and both title to the merchandise and a warehouse receipt have been delivered to the purchaser or beneficiary and a copy of the warehouse receipt has been delivered to the establishment for retention in its files.

c. If authorized by a purchaser under a purchase agreement, a polystyrene or polypropylene outer burial container has been permanently identified with the name of the purchaser or the beneficiary and delivered to a bonded warehouse or storage facility approved by the commissioner and both title to the merchandise and a warehouse receipt have been delivered to the purchaser or beneficiary and a copy of the warehouse receipt has been delivered to the establishment for retention in its files.

10. "Doing business in this state" means issuing or performing wholly or in part any term of a purchase agreement executed within the state of Iowa.

11. "Establishment" means each business establishment that advertises, sells, promotes, or offers cemetery merchandise, funeral merchandise, funeral services, or a combination thereof prior to the death of the person named or implied in a purchase agreement.

12. "Financial institution" means a state or federally insured bank, savings and loan association, credit union, trust department thereof, or a trust company authorized to do business within this state and which has been granted trust powers under the laws of this state or the United States, which holds funds under a trust agreement. "Financial institution" does not include:

a. A seller.

b. Anyone employed by or directly involved

with the seller in the seller's cemetery merchandise, funeral merchandise, or funeral services business.

13. "Funeral merchandise" means personal property used for the final disposition of a dead human body, including but not limited to clothing, caskets, vaults, urns, and interment receptacles. "Funeral merchandise" does not include easements for burial rights in a completed space or cemetery merchandise.

14. "Funeral services" means services provided for the final disposition of a dead human body, including but not limited to services necessarily or customarily provided for a funeral, or for the interment, entombment, or cremation of a dead human body, or any combination thereof. "Funeral services" does not include perpetual care or maintenance.

15. "Inner burial container" means a container in which human remains are placed for burial or entombment. Where only one container is used for burial or entombment, "inner burial container" includes a container serving as a burial vault, urn vault, grave box, grave liner, or lawn crypt.

16. "Insolvent" means the inability to pay debts as they become due in the usual course of business.

17. "Interest or income" means unrealized net appreciation or loss in the fair value of cemetery merchandise, funeral merchandise, and funeral services trust assets for which a market value may be determined with reasonable certainty, plus the return in money or property derived from the use of trust principal or income, net of investment losses, taxes, and expenses incurred in the sale of trust assets, any cost of the operation of the trust, and any annual audit fee. "Interest or income" includes but is not limited to:

a. Rent of real or personal property, including sums received for cancellation or renewal of a lease and any royalties.

b. Interest on money lent, including sums received as consideration for prepayment of principal.

c. Cash dividends paid on corporate stock.

d. Interest paid on deposit funds or debt obligations.

e. Gain realized from the sale of trust assets.

18. "Next of kin" means the surviving spouse and heirs at law of the deceased.

19. "Nonguaranteed" means that the price of the merchandise and services selected has not been fixed or guaranteed and will be determined by existing prices at the time the merchandise and services are delivered or provided.

20. "Outer burial container" means a container used for the burial of human remains that is used exclusively to surround or enclose an inner burial container and to support the earth above the container, commonly known as a burial vault, urn vault, grave box, or grave liner, but not including a lawn crypt.

21. “*Parent company*” means a corporation that has a controlling interest in an establishment.

22. “*Person*” means an individual, business, corporation, trust, firm, partnership, association, or any other legal entity.

23. “*Personal representative*” means a personal representative as defined in section 633.3.

24. “*Provider*” means a person that provides funeral services, funeral merchandise, or cemetery merchandise purchased in a purchase agreement.

25. “*Purchase agreement*” means an agreement to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof when performance or delivery may be more than one hundred twenty days following the initial payment on the account.

26. “*Purchase price*” means the negotiated price for the item of merchandise or service, if itemized in the purchase agreement, or the price of the item listed in the seller’s general price list at the time the purchase agreement is signed.

27. “*Purchaser*” means a person who purchases cemetery merchandise, funeral merchandise, funeral services, or a combination thereof. The purchaser need not be a beneficiary of the agreement.

28. “*Seller*” means a person doing business within this state, including a person doing business within this state who sells insurance, who advertises, sells, promotes, or offers to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof when performance or delivery may be more than one hundred twenty days following the initial payment on the account whether the transaction is completed or offered in person, through the mail, over the telephone, by the internet, or through any other means of commerce. “*Seller*” includes any person performing any term of a purchase agreement executed within this state, and any person identified under a burial account as the provider of cemetery merchandise, funeral merchandise, funeral services, or a combination thereof.

29. “*Total purchase price*” means the aggregate amount the purchaser is obligated to pay for merchandise or services pursuant to the purchase agreement, excluding any taxes, administrative charges, or financing charges.

2001 Acts, ch 118, §18
NEW section

SUBCHAPTER II

ESTABLISHMENT OF TRUSTS — DEPOSIT, INVESTMENT, AND REPORTING REQUIREMENTS

523A.201 Establishment of trust funds.

Unless proceeding under section 523A.401, 523A.402, or 523A.403, a seller must establish a trust fund prior to advertising, selling, promoting,

or offering cemetery merchandise, funeral merchandise, funeral services, or a combination thereof in this state as follows:

1. The trust fund must be established at a financial institution.

2. If a seller agrees to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof and performance or delivery may be more than one hundred twenty days following the initial payment on the account, a minimum of eighty percent of all payments made under the purchase agreement shall be placed and remain in trust until the person for whose benefit the funds were paid dies.

3. If a purchase agreement for cemetery merchandise, funeral merchandise, funeral services, or a combination thereof provides that payments are to be made in installments, the seller shall deposit eighty percent of each payment in the trust fund until the full amount required to be placed in trust has been deposited. If the purchase agreement is financed with or sold to a financial institution, the purchase agreement shall be considered paid in full and the trust requirements shall be satisfied within fifteen days after the close of the month in which the seller receives funds from the financial institution.

4. A seller shall not invade the trust principal for any purpose.

5. A seller who lacks insurance coverage which protects against the loss of purchaser payments not placed in trust within the time period required by this section and section 523A.202 shall not commingle these payments with any other seller funds. A seller who lacks insurance coverage may use one or more of the following methods to dispose of these payments:

a. Deposit purchaser funds into an escrow account until the required amount has been deposited into a trust account at a financial institution.

b. Make a prior delivery or warehouse cemetery or funeral merchandise or a combination thereof as provided by this chapter.

c. Make a prior filing of a surety bond in lieu of establishing a trust fund as required by this section.

d. Make a simultaneous, same-day deposit of the purchaser’s payments into the seller’s bank account and the required amount into the seller’s trust fund.

6. Payments otherwise subject to this section are not exempt merely because they are held in certificates of deposit.

7. Commingling of trust funds with other funds of the seller is prohibited.

8. Interest or income earned on amounts deposited in trust shall remain in trust under the same terms and conditions as payments made under the purchase 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 under this provision does not affect the purchaser's right to a credit of such interest or income in the event of a nonguaranteed price agreement, cancellation, or nonperformance by the seller.

9. The commissioner may require amendments to a trust agreement not in accord with the provisions of this chapter.

10. If a seller voluntarily or involuntarily ceases doing business and the seller's obligation to provide merchandise or services has not been assumed by another establishment holding a current establishment permit, all trust funds, including accrued interest or income, shall be repaid to the purchaser within one hundred twenty days following the seller's cessation of business or, in the event of circumstances where a payment is not possible within one hundred twenty days, as soon as is reasonably practicable.

2001 Acts, ch 118, §19
NEW section

523A.202 Trust fund deposit requirements.

1. All funds held in trust pursuant to section 523A.201 shall be deposited in a financial institution within fifteen days after the close of the month a seller receives the funds. The financial institution shall hold the funds for the designated beneficiary until released.

2. All funds required to be deposited by the purchaser for a purpose described in section 523A.201 shall be deposited consistent with one of the following methods:

a. The payments shall be deposited directly into an interest-bearing burial account in the purchaser's name.

b. The purchaser shall deposit payments directly into a separate trust account in the purchaser's name. The account may be made payable to the seller upon 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 trust account funds and may revoke the trust and withdraw the funds, in whole or in part, at any time during the term of the agreement.

c. The purchaser or the seller shall deposit payments directly into a separate trust account in the name of the purchaser, as trustee, for the named beneficiary, to be held, invested, and administered as a trust account for the benefit and protection of the beneficiary. 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 beneficiary's death.

d. 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 named beneficiary.

3. The commissioner may by rule authorize other methods of deposit upon a finding that such methods provide equivalent safety of the principal and interest or income and the seller lacks access to the proceeds prior to performance.

4. This section does not prohibit moving trust funds from one financial institution to another.

2001 Acts, ch 118, §20
NEW section

523A.203 Financial institution trustees — qualification and investment requirements.

1. A financial institution may serve as a trustee if granted those powers under the laws of this state or of the United States. A financial institution acting as a trustee of trust funds under this chapter shall invest the funds in accordance with applicable law.

2. A financial institution acting as a trustee of trust funds under this chapter has a fiduciary duty to make reasonable investment decisions and to properly oversee and manage the funds entrusted to it. The trustee shall use the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. The commissioner may take enforcement action against a financial institution in its capacity as trustee for a breach of fiduciary duty proven under this chapter.

3. Moneys deposited under a master trust agreement may be commingled by the financial institution for investment purposes if each deposit includes a detailed listing of the amount deposited in trust for each beneficiary and maintenance of a separate accounting of each purchaser's principal, interest, and income.

4. Subject to a master trust agreement, the seller may appoint an independent investment adviser to advise the financial institution about investment of the trust funds.

5. Subject to agreement between the parties, the financial institution may receive a reasonable fee from the trust funds for services rendered as trustee. The trust shall pay the trust operation costs and any annual audit fees.

6. The seller or any officer, director, agent, employee, or affiliate of the seller shall not serve as trustee. A financial institution holding trust funds shall not do any of the following:

a. Be owned, under the control of, or affiliated

with a seller.

b. Use any funds required to be held in trust under this chapter or chapter 566A to purchase an interest in any contract or agreement to which a seller is a party.

c. Otherwise invest, directly or indirectly, in a seller's business operations.

2001 Acts, ch 118, §21
NEW section

523A.204 Establishment annual reporting requirements.

1. An establishment shall file with the commissioner not later than March 1 of each year an annual report on a form prescribed by the commissioner containing all of the following:

a. The seller's name and address and the name and address of the establishment that will provide the cemetery merchandise, funeral merchandise, funeral services, or a combination thereof.

b. The balance of each trust account as of the end of the preceding calendar year, identified by purchaser or beneficiary name.

c. A report of any amounts withdrawn from the trust account including the reason for each withdrawal.

d. A detailed listing of the insurance funding outstanding at the end of the preceding calendar year, identified by the name of the purchaser or the beneficiary.

e. A complete inventory of the cemetery merchandise, funeral merchandise, or a combination thereof delivered in lieu of trust fund requirements under section 523A.401, including the following:

(1) The location of the merchandise.

(2) Merchandise serial numbers or warehouse receipt numbers identified by the name of the purchaser or the beneficiary.

(3) A verified statement of a certified public accountant on a form prescribed by the commissioner that all of the following have occurred:

(a) A physical inventory of the cemetery merchandise or funeral merchandise has been conducted.

(b) Each item of that merchandise is in the seller's possession at the specified location.

f. The purchaser and beneficiary names, the amount of each purchase agreement made in the preceding year, and the date the purchase agreement was made.

g. A summary of any purchase agreements converted from trust-funded benefits to insurance-funded or annuity benefits during the preceding year which shall include, as of the conversion date, the following information, as well as aggregated totals for each of the following categories of information, if appropriate:

(1) Insured's name.

(2) Insured's policy number.

(3) Original prepaid purchase agreement amount.

(4) Amount paid in.

(5) Unpaid balance of the prepaid purchase agreement.

(6) Unpaid balance of the purchase agreement.

(7) Amount retained by the establishment.

(8) Amount applied to the purchase of the insurance policy or annuity.

(9) Initial cash surrender value and initial death benefit under the insurance policy.

The establishment shall include a notarized statement attesting that the insurance policies or annuities have been issued and funded on behalf of the purchasers listed in the summary and that all notices required under this section have been given.

h. A summary of any purchase agreements converted from trust-funded benefits to a surety bond during the preceding year which shall include, as of the conversion date, the following information, as well as aggregated totals for each of the following categories of information, if appropriate:

(1) Name of the purchaser and beneficiary.

(2) Original prepaid purchase agreement amount.

(3) Amount paid in.

(4) Unpaid balance of the prepaid purchase agreement.

(5) Unpaid balance of the purchase agreement.

(6) Amount retained by the establishment.

(7) Amount applied to the purchase of the surety bond.

(8) A description of the surety bond and the applicable amount of coverage.

i. Any other information the commissioner deems necessary for the administration of this chapter.

2. A person holding multiple establishment permits may elect to file only one annual report after noting all establishments on the report.

3. An establishment shall make a good faith effort to complete the annual report. The establishment shall note on the annual report any information not reasonably available to the establishment as an exception or variance. Account balances within twelve months of the date of the filing of the annual report shall be accepted if the actual date of the account balances is noted.

4. In lieu of the annual report form described in subsection 1, the commissioner may authorize an establishment to file a short form annual report on a form prescribed by the commissioner. The short form annual report may incorporate by reference information readily available to the establishment. The commissioner may certify and decertify establishments authorized to file the short form based upon:

a. The establishment's recordkeeping system.

b. The number of purchase agreements which the establishment has sold that are subject to reg-

ulation under this chapter.

c. The availability and accessibility of information at the establishment for purchase agreements subject to regulation.

d. Whether the establishment places one hundred percent of funds received pursuant to its purchase agreements in trust.

e. The findings of the commissioner concerning audits and consumer complaints.

The commissioner shall retain the authority to require establishments permitted to file the short form annual report to provide all of the information required in the annual report form required by subsection 1 for audit purposes or otherwise.

5. An establishment filing an annual report shall pay a filing fee of ten dollars per purchase agreement sold during the year covered by the report. The fee does not apply to any of the following:

a. A purchase agreement where the beneficiary dies in the same year the agreement was sold.

b. Any modifications or additions, such as payments, for an existing purchase agreement sold in a previous year.

c. An additional agreement purchased and already reported to the commissioner by the purchaser.

d. A purchase agreement canceled or revoked in the same year it was sold.

All purchase agreement changes for which a filing fee is not required must be reported to the commissioner on the annual report for the year covered.

6. As part of the annual filing with the commissioner, an establishment shall file an authorization for the commissioner or a designee to investigate, audit, and verify all funds, accounts, safe deposit boxes, and other evidence of establishment trust funds held by or in a financial institution.

7. Forms may be obtained at cost from the commissioner upon request. The commissioner may accept annual reports submitted in an electronic format, including but not limited to computer diskettes.

8. Notwithstanding chapter 22, all records maintained by the commissioner under this section shall be confidential and shall not be made available for inspection or copying except upon approval of the commissioner or the attorney general.

2001 Acts, ch 118, §22
NEW section

523A.205 Financial institution annual reporting requirements.

1. A financial institution shall file with the commissioner not later than March 1 of each year an annual report on a form prescribed by the commissioner showing all funds deposited by an establishment under a trust agreement during the previous year. Each report shall contain all information requested.

2. Forms may be obtained from the commissioner upon request. The commissioner may accept annual reports submitted in an electronic format, including but not limited to computer diskettes.

3. Notwithstanding chapter 22, all records maintained by the commissioner under this section shall be confidential and shall not be made available for inspection or copying except upon approval of the commissioner or the attorney general.

2001 Acts, ch 118, §23
NEW section

523A.206 Audits.

1. The commissioner may make audits of the establishment and of the records of a seller, at the times and in the scope the commissioner determines. The audits may be made without prior notice to the seller. The commissioner may copy all records the commissioner feels are necessary to conduct the audit. The commissioner may require an audit of a seller or other person by a certified public accountant to verify compliance with this chapter, implementing rules, or orders.

2. A seller or other person shall pay for the audit unless the commissioner waives this requirement. The cost of an audit involving multiple sellers or other persons shall be prorated among them upon any reasonable basis as determined by the commissioner. The accountant shall deliver the audit report to the commissioner and to the seller or other persons.

3. The commissioner shall not make public the information obtained in the course of an audit, except when a duty under this chapter requires the commissioner to take action against a seller or to cooperate with another enforcement or regulatory agency, or except when the commissioner is called as a witness in a civil or criminal proceeding.

2001 Acts, ch 118, §24
NEW section

SUBCHAPTER III

DISBURSEMENT OF REMAINING BURIAL TRUST FUNDS OR INSURANCE OR ANNUITY PROCEEDS — MEDICAL ASSISTANCE DEBTS

523A.301 Definition.

As used in sections 523A.302 and 523A.303, “*director*” means the director of human services.

2001 Acts, ch 118, §25
NEW section

523A.302 Identification of merchandise and service provider.

If a burial trust fund identifies, either in the trust fund records or in a related purchase agreement, the seller who will provide the cemetery merchandise, funeral merchandise, funeral services, or a combination thereof, the trust fund records or the related purchase agreements must

contain a statement signed by an authorized representative of the seller agreeing to furnish the cemetery merchandise, funeral merchandise, funeral services, or a combination thereof upon the death of the beneficiary. The burial trust fund shall not identify a specific seller as payee unless the trust fund records or the related purchase agreements, if any, contain the signature of an authorized representative of the seller and, if the agreement is for funeral services as defined in chapter 156, the name of a funeral director licensed to deliver those services. A person may enter into agreements authorizing the establishment of more than one burial trust fund and agreeing to furnish the applicable merchandise and services.

2001 Acts, ch 118, §26
NEW section

523A.303 Disbursement of remaining funds.

1. If funds remain in a nonguaranteed irrevocable burial trust fund or from the proceeds of an insurance policy or annuity made payable or assigned to the seller or a provider after the payment of funeral and burial expenses in accordance with the conditions and terms of the purchase agreement for cemetery merchandise, funeral merchandise, or funeral services, the seller shall comply with all of the following:

a. The seller shall provide written notice by mail to the director under subsection 2.

b. At least sixty days after mailing notice to the director, the seller shall disburse any remaining funds from the burial trust fund as follows:

(1) If within the sixty-day period the seller receives a claim from the personal representative of the deceased, any remaining funds shall be disbursed to the personal representative, notwithstanding any claim by the director.

(2) If within the sixty-day period the seller has not received a claim from the personal representative of the deceased but receives a claim from the director, the seller shall disburse the remaining funds up to the amount of the claim to the director.

(3) Any remaining funds not disposed of pursuant to subparagraphs (1) and (2) shall be disbursed to any person who is identified as the next of kin of the deceased in an affidavit submitted in accordance with subsection 5.

2. The notice mailed to the director shall meet all of the following requirements and is subject to all of the following conditions:

a. The notice shall be mailed with postage prepaid.

b. If the notice is sent by regular mail, the sixty-day period for receipt of a response is deemed to commence three days following the date of mailing.

c. If the notice is sent by certified mail, the sixty-day period for receipt of a response is deemed to commence on the date of mailing.

d. The notice shall provide all of the following information:

(1) Current name, address, and telephone number of the seller.

(2) Full name of the deceased.

(3) Date of the deceased's death.

(4) Amount of funds remaining in the burial trust fund.

(5) Statement that any claim by the director must be received by the seller within sixty days after the date of mailing of the notice.

e. A notice in substantially the following form complies with this subsection:

"TO: THE DIRECTOR OF HUMAN SERVICES

FROM: (SELLER'S NAME, CURRENT ADDRESS, AND TELEPHONE NUMBER)

YOU ARE HEREBY NOTIFIED THAT (NAME OF DECEASED), WHO HAD AN IRREVOCABLE BURIAL TRUST FUND, HAS DIED, THAT FINAL PAYMENT FOR CEMETERY MERCHANDISE, FUNERAL MERCHANDISE, AND FUNERAL SERVICES HAS BEEN MADE, AND THAT (REMAINING AMOUNT) REMAINS IN THE IRREVOCABLE BURIAL TRUST FUND.

THE ABOVE-NAMED SELLER MUST RECEIVE A WRITTEN RESPONSE REGARDING ANY CLAIM BY THE DIRECTOR WITHIN SIXTY DAYS AFTER THE MAILING OF THIS NOTICE TO THE DIRECTOR.

IF THE ABOVE-NAMED SELLER DOES NOT RECEIVE A WRITTEN RESPONSE REGARDING A CLAIM BY THE DIRECTOR WITHIN SIXTY DAYS AFTER THE MAILING OF THIS NOTICE, THE SELLER MAY DISPOSE OF THE REMAINING FUNDS IN ACCORDANCE WITH SECTION 523A.303, CODE OF IOWA."

3. Upon receipt of the seller's written notice, the director shall determine if a debt is due the department of human services pursuant to section 249A.5. If the director determines that a debt is owing, the director shall provide a written response to the seller within sixty days after the mailing of the seller's notice. If the director does not respond with a claim within the sixty-day period, any claim made by the director shall not be enforceable against the seller, the trust, or a trustee.

4. A personal representative who wishes to make a claim shall send written notice of the claim to the seller. If the seller does not receive any claim from a personal representative within the sixty-day period provided for response by the director regarding a claim, the claim of the personal representative shall not be enforceable against the seller, the trust, or a trustee.

5. Any person other than a personal representative or the director claiming an interest in the remaining funds shall submit an affidavit claiming an interest which provides the following information:

a. Full name, current address, and telephone number of the claimant.

b. Claimant's relationship to the deceased.

c. Name of any surviving next of kin of the deceased, and the relationship of any named surviving next of kin.

d. That the claimant has no knowledge of the existence of a personal representative for the deceased's estate.

6. The seller may retain not more than fifty dollars of the remaining funds in the burial trust fund for the administrative expenses associated with the requirements of this section.

7. If the funds remaining in a burial trust fund are disbursed under the requirements of this section, the seller, the provider, the burial trust fund, and any trustee shall not be liable to the director, the estate of the deceased, any personal representative, or any other interested person for the remaining funds and any lien imposed by the director shall be unenforceable against the seller, the burial trust fund, or any trustee.

2001 Acts, ch 118, §27
NEW section

SUBCHAPTER IV

TRUSTING ALTERNATIVES

523A.401 Purchase agreements funded by insurance proceeds.

1. A purchase agreement may be funded by insurance proceeds derived from a new or existing insurance policy issued by an insurance company authorized to do business and doing business within this state.

2. Such funding may be in lieu of the trusting requirements of this chapter when the purchaser assigns the proceeds of an existing insurance policy.

3. Such funding may be in lieu of the trusting requirements of this chapter when a new insurance policy is purchased to fund the purchase agreement, with a face amount equal to or greater than the current retail price of the cemetery merchandise, funeral merchandise, and funeral services to be delivered under the purchase agreement or, if less, a face amount equal to the total of all payments to be submitted by the purchaser pursuant to the purchase agreement.

4. The premiums of any new insurance policy shall be fully paid within thirty days after execution of the purchase agreement or, with respect to a purchase agreement that provides for periodic payments, the premiums shall be paid directly by the purchaser to the insurance company issuing the policy.

5. Any new insurance policy shall satisfy the following conditions:

a. Except as necessary and appropriate to satisfy the requirements regarding burial trust funds under Title XIX of the federal Social Security Act,

the policy shall not be owned by the establishment, the policy shall not be irrevocably assigned to the establishment, and the assignment of proceeds from the insurance policy to the establishment shall be limited to the establishment's interests as they appear in the purchase agreement, and conditioned on the establishment's delivery of cemetery merchandise, funeral merchandise, and funeral services pursuant to a purchase agreement.

b. The policy shall provide that any assignment of benefits is contingent upon the establishment's delivery of cemetery merchandise, funeral merchandise, and funeral services pursuant to a purchase agreement.

c. The policy shall have an increasing death benefit or similar feature that provides some means for increasing the funding as the cost of cemetery merchandise, funeral merchandise, and funeral services increases.

6. With the written consent of the purchaser, an existing prepaid purchase agreement with trust-funded benefits may be converted to a prepaid purchase agreement with insurance-funded benefits provided the establishment and the insurance benefits comply with the following provisions:

a. The transfer of the trust funds to the insurance company must be at least equal to the full sum required to be deposited as trust principal under the trust-funded prepaid purchase agreement plus all net earnings accumulated with respect thereto, as of the transfer date. Commissions, allowances, surrender charges or other forms of compensation or expense loads, premium expense, administrative charges or expenses, or policy fees shall not be deducted from the trust funds transferred pursuant to the conversion.

b. The face amount of any insurance policy issued on an individual must be no less than the amount of principal and interest transferred for that individual to the insurance company, and any supplemental insurance policy issued to cover the unfunded portion of the purchase agreement must have a face amount that is at least as great as the unfunded principal balance. The face amount of the insurance purchased shall not, under any circumstances, be less than the total of all payments made by the purchaser pursuant to the agreement plus all net earnings accumulated with respect thereto, as of the transfer date.

c. The insurance policy shall not allow for contesting coverage, limit death benefits in the case of suicide, refer to physical examination, or otherwise operate as an exclusion, limitation, or condition other than requiring submission of proof of death or surrender of policy at the time the prepaid purchase agreement is funded, matures, or is canceled, as the case may be.

d. The establishment shall maintain a copy of any prepaid trust-funded purchase agreement that was converted to a prepaid insurance-funded

purchase agreement and retain the payment history records for each converted purchase agreement prior to conversion until the cemetery merchandise, funeral merchandise, and funeral services have been delivered.

7. The seller of a purchase agreement subject to this chapter which is to be funded by insurance proceeds shall obtain all permits required to be obtained and comply with all reporting requirements under this chapter.

8. An insurance company issuing policies funding purchase agreements subject to this chapter shall file an annual report with the commissioner on a form prescribed by the commissioner. The report shall list the applicable insurance policies outstanding for each establishment. Computer printouts may be submitted so long as each legibly provides the same information required in the prescribed form.

2001 Acts, ch 118, §28; 2001 Acts, ch 176, §73
NEW section

523A.402 Purchase agreements funded by annuity proceeds.

1. A purchase agreement may be funded by proceeds derived from a new or existing annuity issued by an insurance company authorized to do business and doing business within this state.

2. Such funding may be in lieu of the trust requirements of this chapter when the purchaser assigns the proceeds of an existing annuity.

3. Such funding may be in lieu of the trust requirements of this chapter when a new annuity is purchased to fund the purchase agreement, with a face amount equal to or greater than the current retail price of the cemetery merchandise, funeral merchandise, and funeral services to be delivered under the purchase agreement or, if less, a face amount equal to the total of all payments to be submitted by the purchaser pursuant to the purchase agreement.

4. The premiums of any new annuity shall be fully paid within thirty days after execution of the purchase agreement or, with respect to a purchase agreement that provides for periodic payments, the premiums shall be paid directly by the purchaser to the insurance company issuing the annuity.

5. The annuity shall satisfy the following conditions:

a. Except as necessary and appropriate to satisfy the requirements regarding burial trust funds under Title XIX of the federal Social Security Act, the annuity shall not be owned by the establishment or irrevocably assigned and any designation of the establishment as a beneficiary shall not be made irrevocable.

b. The annuity shall provide that any assignment of benefits is contingent upon the establishment's delivery of cemetery merchandise, funeral merchandise, and funeral services pursuant to a purchase agreement.

c. The annuity shall have an increasing death benefit or similar feature that provides some means for increasing the funding as the cost of cemetery merchandise, funeral merchandise, and funeral services increases.

6. With the written consent of the purchaser, an existing prepaid purchase agreement with trust-funded benefits may be converted to a prepaid purchase agreement with annuity-funded benefits provided the establishment and the annuity benefits comply with the following provisions:

a. The transfer of the trust funds to the insurance company must be at least equal to the full sum required to be deposited as trust principal under the trust-funded prepaid purchase agreement plus all net earnings accumulated with respect thereto, as of the transfer date. Commissions, allowances, surrender charges or other forms of compensation or expense loads, premium expense, administrative charges or expenses, or fees shall not be deducted from the trust funds transferred pursuant to the conversion.

b. The face amount of any annuity issued on an individual must be no less than the amount of principal and interest transferred for that individual to the insurance company, and any supplemental annuity issued to cover the unfunded portion of the purchase agreement must have a face amount that is at least as great as the unfunded principal balance. The face amount of the annuity purchased shall not, under any circumstances, be less than the total of all payments made by the purchaser pursuant to the agreement plus all net earnings accumulated with respect thereto, as of the transfer date.

c. The annuity shall not allow for contesting coverage, limit death benefits in the case of suicide, refer to physical examination, or otherwise operate as an exclusion, limitation, or condition other than requiring submission of proof of death or surrender of the annuity at the time the prepaid purchase agreement is funded, matures, or is canceled, as the case may be.

d. The establishment shall maintain a copy of any prepaid trust-funded purchase agreement that was converted to a prepaid annuity-funded purchase agreement and retain the payment history records for each converted purchase agreement prior to conversion until the cemetery merchandise, funeral merchandise, and funeral services have been delivered.

7. The seller of a purchase agreement subject to this chapter which is to be funded by annuity proceeds shall obtain all permits required to be obtained and comply with all reporting requirements under this chapter.

8. An insurance company issuing annuities funding purchase agreements subject to this chapter shall file an annual report with the commissioner on a form prescribed by the commissioner. The report shall list the applicable annuities out-

standing for each establishment. Computer printouts may be submitted so long as each legibly provides the same information required in the prescribed form.

2001 Acts, ch 118, §29
NEW section

523A.403 Purchase agreements funded by certificates of deposit.

1. A purchase agreement may be funded by proceeds derived from a certificate of deposit in the name of the purchaser made payable to the seller upon the purchaser's death.

2. The seller of a purchase agreement subject to this chapter which is to be funded by a certificate of deposit shall obtain all permits required to be obtained and comply with all reporting requirements under this chapter, implementing rules, and orders.

2001 Acts, ch 118, §30
NEW section

523A.404 Merchandise delivered to the purchaser or warehoused.

1. Trust requirements do not apply to payments for outer burial containers made of either polystyrene or polypropylene or cemetery merchandise delivered to the purchaser or stored in an independent third-party storage facility not owned or controlled by the seller when approved by the commissioner. The seller or the storage facility must demonstrate that they will do all of the following:

- a. Issue a receipt of ownership in the name of the purchaser and deliver it to the purchaser.
- b. Insure the merchandise against loss.
- c. Protect the merchandise against damage.
- d. Transfer title to the purchaser.
- e. Appropriately identify and describe the merchandise in a manner that it can be distinguished from other similar items.
- f. Use a method of storage that allows for visual audits of the merchandise.
- g. Have adequate, computerized recordkeeping systems in place to identify, describe, and count each item in storage, including the ownership of each item, and provide an aggregate listing with numerical totals.
- h. File a consent to be audited and inspected by the commissioner.
- i. Provide reports to the commissioner, annually, by an independent certified public accountant, which shall include a physical count of merchandise held in storage and a review of information, including the seller's revenue and sales records, as necessary to verify the adequacy of the number of items held at the storage facility.
- j. Satisfy the annual reporting requirements of section 523A.204.

2. Lawn crypts may be delivered in lieu of trusting. For this purpose, delivery means installation in a grave owned by the purchaser. The sell-

er shall do all of the following:

a. Notify the administrator before the lawn crypts are installed.

b. Identify the intended location of the lawn crypts within the cemetery.

c. Provide documentation adequately demonstrating delivery has occurred. Adequate documentation includes but is not limited to photographs and third-party certifications.

3. Cemetery merchandise and funeral merchandise shall not be deemed delivered to the purchaser or warehoused if the merchandise is subject to a lien or security interest by any party other than the seller.

4. An establishment is prohibited from requiring delivery as a condition of the sale.

5. A seller shall provide services necessary for the installation or burial of outer burial containers sold by the seller. This subsection shall not require the seller to provide for the opening or closing of the interment or entombment space, unless the purchase agreement provides otherwise.

2001 Acts, ch 118, §31
NEW section

523A.405 Bond in lieu of trust fund.

1. In lieu of trust requirements, a seller may file with the commissioner a surety bond issued by a surety company authorized to do business and doing business within this state. The bond must be conditioned upon the seller's faithful performance of purchase agreements subject to this chapter. The surety's liability extends to each such agreement executed while the bond is in force and until performance or rescission of the purchase agreement. The aggregate liability of the surety for any and all breaches of the conditions of the bond shall not exceed the penal sum of the bond. To the extent expressly agreed to in writing by the surety, the surety's liability extends to each such agreement subject to this chapter executed prior to the time the bond was in force and until performance or rescission of the agreement. A purchaser aggrieved by a breach of a condition of the bond covering the purchaser's agreement may maintain an action against the bond. If, at the time of the breach, the purchaser is aware of the purchaser's rights under the bond and how to file a claim against the bond, the surety shall not be liable for any breach of condition unless the surety receives notice of a claim within sixty days following discovery of the acts, omissions, or conditions constituting the breach of condition, except as otherwise provided in this section. A surety bond shall not be canceled by a surety except upon a written notice of cancellation given by the surety to the commissioner by restricted certified mail, and not prior to the expiration of sixty days after receipt of the notice by the commissioner. The surety's liability shall extend to each purchase agreement subject to this chapter executed prior to cancellation of the surety bond until the seller has com-

plied with subsection 3.

2. If a seller becomes insolvent or otherwise ceases to engage in business prior to or within sixty days after cancellation of a bond, the seller shall be deemed to have breached the bond conditions for outstanding agreements under this chapter as of the day prior to cancellation of the bond. The commissioner shall mail written notice by restricted certified mail to the purchaser under each outstanding purchase agreement of the seller that a claim against the bond must be filed with the surety company within sixty days after the mailing date of the notice. The surety shall cease to be liable for all purchase agreements except those for which claims are filed with the surety company within sixty days after the date the commissioner mails the notices.

3. If a surety bond is canceled by a surety under any conditions other than those specified in subsection 2, the seller shall comply with all of the following:

a. The seller shall comply with the trust requirements of section 523A.201 for all purchase agreements subject to this chapter executed on or after the effective date of cancellation of the surety bond. In the alternative, the seller may submit a substitute surety bond meeting the requirements of subsection 1, but the seller must comply with section 523A.201 for any purchase agreements executed on or after the effective cancellation date of the earlier surety bond and prior to the effective date of the later surety bond.

b. Within sixty days after the effective cancellation date of the surety bond, the seller shall submit to the commissioner an undertaking by another surety company that a substitute surety bond meeting the requirements of subsection 1 is in effect and that the liability of the substitute surety bond extends to all outstanding purchase agreements of the seller that were executed but not performed or extinguished prior to the effective date of the substitute surety bond, or the seller shall submit to the commissioner a financial statement accompanied by an unqualified opinion based upon an audit performed by a certified public accountant licensed in this state certifying the total amount of outstanding liabilities of the seller on purchase agreements subject to this chapter and proof of deposit by the seller in trust under section 523A.201 of either the amount specified in section 523A.201, including interest as set by the commissioner based on the interest which would have been earned had the funds been maintained in trust, with respect to all of those outstanding purchase agreements or, where applicable, that delivery of merchandise has been made in compliance with section 523A.404. The surety may require such security as is necessary to comply with this section. Upon compliance by the seller with this paragraph, the surety company canceling the surety bond shall cease to be liable with respect to any outstanding purchase agreements of the sell-

er except those purchase agreements with respect to which a breach of condition occurred prior to cancellation and for which timely claims were filed.

4. Section 523A.202 and, to the extent it is applicable, section 523A.206, apply to sellers whose purchase agreements are covered by a surety bond maintained under this section, and section 523A.202 continues to apply to any purchase agreements of those sellers that are not covered by a surety bond maintained under this section.

5. Upon receiving a notice of cancellation of a surety bond, the commissioner shall notify the seller of the requirements of this chapter resulting from cancellation of the bond. The notice may be in the form of a copy of this section and sections 523A.201 and 523A.202.

6. Upon receiving a notice of cancellation, unless the seller has complied with the requirements of this section, the attorney general shall seek an injunction to prohibit the seller from making further purchase agreements subject to this chapter. The attorney general shall commence an action to attach and levy execution upon property of the seller when the seller fails to perform a purchase agreement subject to this chapter, to the extent necessary to secure compliance with this chapter. The county attorney may bring criminal charges under subchapter VII.

7. The surety under this section shall not be owned, under the control of, or affiliated with the seller.

8. The amount of the surety bond shall equal eighty percent of the payments received pursuant to purchase agreements, or the applicable portion thereof, for cemetery merchandise, funeral merchandise, funeral services, or a combination thereof and the amount needed to adjust the amount of the surety bond for inflation as set by the commissioner based on the consumer price index. The seller shall review the amount of the surety bond no less than annually and shall increase the bond as necessary to reflect additional payments. The amount needed to adjust for inflation shall be added annually to the surety bond during the first quarter of the establishment's fiscal year.

9. With the consent of the purchaser, an existing prepaid purchase agreement with trust-funded benefits may be converted to a prepaid purchase agreement funded by a surety bond provided the establishment and the surety bond comply with the following provisions:

a. The amount of the trust funds transferred to the surety company must be at least equal to the full sum required to be deposited as trust principal under the trust-funded prepaid purchase agreement plus all net earnings accumulated with respect thereto, as of the transfer date. Commissions, allowances, surrender charges or other forms of compensation or expense loads, premium expense, administrative charges or expenses, or fees shall not be deducted from the trust funds

transferred pursuant to the conversion.

b. The face amount of the surety bond issued on an individual must be no less than the amount of principal and interest transferred for that individual to the surety company, and any supplemental surety bond issued to cover the unfunded portion of the purchase agreement must have a face amount that is at least as great as the unfunded principal balance. The face amount of the surety bond purchased shall not, under the circumstances, be less than the total of all payments made by the purchaser pursuant to the agreement plus all net earnings accumulated with respect thereto, as of the transfer date.

c. The establishment shall maintain a copy of any prepaid trust-funded agreement that was converted to a prepaid purchase agreement funded by a surety bond and retain the payment history records for each converted purchase agreement prior to conversion until the cemetery merchandise, funeral merchandise, and funeral services have been delivered.

2001 Acts, ch 118, §32; 2001 Acts, ch 176, §74
NEW section

SUBCHAPTER V
ESTABLISHMENT AND
SALES PERMITS

523A.501 Establishment permits.

1. A person shall not advertise, sell, promote, or offer to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof when performance or delivery may be more than one hundred twenty days following the initial payment on the account without an establishment permit. Each establishment must have an establishment permit.

2. An application for an establishment permit shall be filed on a form prescribed by the commissioner, be accompanied by a fifty dollar filing fee, and include a copy of each purchase agreement the person will use for sales of cemetery merchandise, funeral merchandise, funeral services, or a combination thereof.

3. The application shall contain:

a. The name and address of the establishment.
b. The name and address of any additional provider of cemetery merchandise, funeral merchandise, funeral services, or a combination thereof.

c. The name and address of each owner, officer, or other official of the establishment, including when relevant the chief executive officer and the members of the board of directors.

d. A description of any common business enterprise or parent company.

e. The types of cemetery merchandise, funeral merchandise, funeral services, or a combination thereof to be sold.

f. The types of trust or trust alternatives uti-

lized by the establishment and a list of the financial institutions, storage facilities, surety companies, and insurance companies utilized by the establishment on a regular basis.

4. A permit holder shall inform the commissioner of changes in the information required to be provided by subsection 3 within thirty days of the change.

5. An establishment permit is not assignable or transferable. A permit holder selling all or part of an establishment shall cancel the permit and the purchaser shall apply for a new permit in the purchaser's name within thirty days of the sale.

6. The commissioner shall grant or deny a permit application within thirty days after receipt, but the commissioner's failure to act within that time period shall not be deemed approval of the application. If the commissioner does not grant the permit, the commissioner shall notify the person in writing of the reasons for the denial. The permit shall disclose on its face the permit holder's employer or the establishment on whose behalf the applicant will be making or attempting to make sales, the permit number, and the expiration date.

7. An initial permit is valid for two years from the date the application is filed. A permit may be renewed for two years by filing the form prescribed by the commissioner under subsection 2, accompanied by a ten dollar renewal fee. Submission of purchase agreements is not required for renewals unless the purchase agreements have been modified since the last filing.

8. The commissioner may by rule create or accept a multijurisdiction establishment permit. If the establishment permit is issued by another jurisdiction, the rules shall require the filing of an application or notice form and payment of the applicable filing fee of fifty dollars for an initial application and ten dollars for a renewal application. The application or notice form utilized and the effective dates and terms of the permit may vary from the provisions set forth in subsections 2, 3, and 7.

2001 Acts, ch 118, §33
NEW section

523A.502 Sales permits.

1. A person shall not advertise, sell, promote, or offer to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof when performance or delivery may be more than one hundred twenty days following initial payment on the account without a sales permit. A permit holder must be an employee or agent of a person holding an establishment permit who can deliver the cemetery merchandise, funeral merchandise, funeral services, or a combination thereof being sold. A person must have a sales permit for each establishment at which the person works. However, a person may apply for a sales permit covering multiple establishments, if the establishments have common ownership. The es-

establishment permit holder is liable for the acts of its employees and agents performed in advertising, selling, promoting, or offering to furnish, upon the future death of a person named or implied in a purchase agreement, cemetery merchandise, funeral merchandise, funeral services, or a combination thereof.

2. This chapter does not permit a person to practice mortuary science without a license. A person holding a current sales permit may advertise, sell, promote, or offer to furnish a funeral director's services as an employee or agent of a funeral establishment furnishing the funeral services under chapter 156.

3. An application for a sales permit shall be filed on a form prescribed by the commissioner and be accompanied by a five dollar filing fee.

4. The application shall contain:

a. The name and address of the person.

b. The name and address of the person's employer and each establishment on whose behalf the person will be advertising, selling, promoting, or offering to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof.

c. The name and address of the provider who will provide the cemetery merchandise, funeral merchandise, funeral services, or a combination thereof if different from the person's employer.

5. An initial permit expires one year from the date the application is filed. The permit may be renewed for four years by filing the form prescribed by the commissioner under subsection 3, accompanied by a twenty dollar filing fee.

6. A permit holder shall inform the commissioner of changes in the information required to be provided by subsection 4 within thirty days of the change.

7. A sales permit is not assignable or transferable. A permit holder selling all or part of a business shall cancel the permit and the purchaser shall apply for a new permit in the purchaser's name within thirty days of the sale.

8. The commissioner shall grant or deny a permit application within thirty days after receipt, but the commissioner's failure to act within that time period shall not be deemed approval of the application. If the commissioner does not grant the permit, the commissioner shall notify the applicant in writing of the reasons for the denial.

9. The commissioner may by rule create or accept a multijurisdiction sales permit. If the sales permit is issued by another jurisdiction, the rules shall require the filing of an application or notice form and payment of the applicable filing fee of five dollars for each year. The application or notice form utilized and the effective dates and terms of the permit may vary from the provisions set forth in subsections 3 and 5.

2001 Acts, ch 118, §34
NEW section

523A.503 Denial, suspension, revocation, and surrender of permits.

1. The commissioner may, pursuant to chapter 17A, deny any permit application or immediately suspend or revoke any permit issued under this chapter for several reasons, including but not limited to:

a. Committing a fraudulent act, engaging in a fraudulent practice, or violating any provision of this chapter or any implementing rule or order issued under this chapter.

b. Violating any other state or federal law applicable to the conduct of the applicant's or permit holder's business.

c. Insolvency or financial condition.

d. The permit holder, for the purpose of avoiding the trust requirement for funeral services, attributes amounts paid under the purchase agreement to cemetery merchandise or funeral merchandise that is delivered under section 523A.404 rather than to funeral services sold to the purchaser. The sale of funeral services at a lower price when the sale is made in conjunction with the sale of cemetery merchandise or funeral merchandise to be delivered under section 523A.404 than the services are regularly and customarily sold for when not sold in conjunction with cemetery merchandise or funeral merchandise is evidence that the permit holder is acting with the purpose of avoiding the trust requirement for funeral services under section 523A.201.

e. Engaging in a deceptive act or practice or deliberately misrepresenting or omitting a material fact regarding the sale of cemetery merchandise, funeral merchandise, funeral services, or a combination thereof under this chapter.

f. Conviction of a criminal offense involving dishonesty or a false statement.

g. Inability to provide the cemetery merchandise, funeral merchandise, funeral services, or a combination thereof which the applicant or permit holder purports to sell.

h. The applicant or permit holder sells the business without filing a prior notice of sale with the commissioner. The permit shall be revoked thirty days following such sale.

i. Selling by a person who is not an employee or agent of the applicant or permit holder.

2. The commissioner may, for good cause shown, suspend any permit for a period not exceeding thirty days, pending investigation.

3. Except as provided in subsection 2, a permit shall not be revoked or suspended except after notice and hearing under chapter 17A.

4. Any permit holder may surrender a permit by delivering to the commissioner written notice that the permit holder surrenders the permit, but the surrender shall not affect the permit holder's civil or criminal liability for acts committed before the surrender.

5. Denial, revocation, suspension, or surrender of a permit does not impair or affect the obligation of any preexisting lawful agreement between the permit holder and any person.

2001 Acts, ch 118, §35
NEW section

SUBCHAPTER VI

PURCHASE AGREEMENTS

523A.601 Disclosures.

1. A purchase agreement for cemetery merchandise, funeral merchandise, funeral services, or a combination thereof shall be written in clear, understandable language, and shall be printed or typed in an easy-to-read font, 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, funeral merchandise, funeral services, or a combination thereof is purchased, if other than the purchaser.

b. Specify the cemetery merchandise, funeral merchandise, funeral services, or a combination thereof to be provided, and the cost of each merchandise item or service.

c. State clearly the conditions upon which substitution will be allowed.

d. State the total purchase price and the terms under which it is to be paid.

e. State clearly whether the purchase agreement is a guaranteed price agreement or a nonguaranteed price agreement. A nonguaranteed price agreement shall contain in twelve point boldface type an explanation of the consequences of such agreement 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 AGREEMENT ARE ONLY A DEPOSIT TO BE APPLIED, TOGETHER WITH ACCRUED INCOME, TOWARD THE FINAL COSTS OF THE MERCHANDISE OR SERVICES AGREED UPON. ADDITIONAL CHARGES MAY BE INCURRED WHEN ADDITIONAL MERCHANDISE OR SERVICES OR BOTH ARE PROVIDED OR WHEN PRICES HAVE INCREASED MORE THAN ACCRUED INCOME.

f. State that the purchase of the cemetery merchandise, funeral merchandise, and funeral services is revocable and specify the damages for cancellation, if any.

g. State clearly who has the authority to cancel, amend, or revoke the purchase agreement to

purchase cemetery merchandise, funeral merchandise, and funeral services.

h. State clearly that the purchaser is entitled to rescind the purchase agreement under terms and conditions specified by section 523A.602.

i. Include an explanation of regulatory oversight by the insurance division in twelve point boldface type, in substantially the following language:

THIS AGREEMENT IS SUBJECT TO RULES ADMINISTERED BY THE IOWA INSURANCE DIVISION. YOU MAY CALL THE INSURANCE DIVISION AT (....) WRITTEN INQUIRIES OR COMPLAINTS SHOULD BE MAILED TO THE IOWA SECURITIES BUREAU, (STREET ADDRESS), (CITY), IOWA (ZIP CODE).

2. A purchase agreement that is funded by a trust shall also:

a. State the percentage of money to be placed in trust.

b. Explain the disposition of the income generated from investments and include a statement of the purchaser's responsibility for income taxes owed on the income if applicable.

c. State that if, after all payments are made under the conditions and terms of the purchase agreement for cemetery merchandise, funeral merchandise, funeral services, or a combination thereof, any funds remain in the nonguaranteed irrevocable burial trust fund, the seller shall disburse the remaining funds according to law.

d. State clearly the terms of the funeral and burial trust agreement and whether it is revocable or irrevocable.

e. State clearly that the purchaser is entitled to transfer the trust funding, insurance funding, or other trust assets or select another establishment to receive the trust funding, insurance funding, or any other trust assets.

f. State clearly who has the authority to amend or revoke the trust agreement, if revocable, and who has the authority to appoint successor trustees if the purchase agreement is canceled.

3. The commissioner may adopt rules establishing disclosure and format requirements to promote consumer understanding of the merchandise and services purchased and the available funding mechanisms for a purchase agreement under this chapter.

4. A purchase 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 funeral services.

5. The seller shall disclose the following information prior to accepting the initial payment under a purchase agreement:

a. The specific method or methods (trust deposits, certificates of deposit, life insurance or an annuity, a surety bond, or warehousing) that will

be used to fund the purchase agreement.

b. The relationship between the soliciting agent or agents, the provider of the cemetery merchandise, funeral merchandise, or funeral services, or combination thereof, the commissioner, and any other person.

c. The relationship of the life insurance policy or other trust assets to the funding of the purchase agreement and the nature and existence of any guarantees regarding the purchase agreement.

d. The impact on the purchase agreement of the following:

(1) Changes in the funding, including but not limited to changes in the assignment, beneficiary designation, trustee, or use of proceeds.

(2) Any penalties to be incurred by the purchaser as a result of the failure to make any additional payments required.

(3) Penalties to be incurred upon cancellation.

e. A list of cemetery merchandise, funeral merchandise, and funeral services which are agreed upon under the purchase agreement and all relevant information concerning the price of the cemetery merchandise, funeral merchandise, funeral services, or a combination thereof, including a statement 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 funding and the amount actually needed to fund the purchase agreement.

g. Any penalties or restrictions, including but not limited to geographic restrictions or the inability of the provider to perform, upon delivery of cemetery merchandise, funeral merchandise, or funeral services, or the purchase agreement guarantee.

h. If the funding is being transferred from another establishment, any material facts related to the revocation of the prior purchase agreement and the transfer of the existing trust funds.

2001 Acts, ch 118, §36
NEW section

523A.602 Consumer rescission, cancellation, and refund rights — purchase agreement compliance with other laws.

1. A seller shall furnish the purchaser with a completed copy of a purchase agreement pertaining to the sale at the time the purchase agreement is signed. The seller shall comply with the following terms:

a. The same language shall be used in both the oral sales representation and the written purchase agreement.

b. The seller shall give notice in the purchase agreement of the purchaser's right to rescind after signing the purchase agreement. The rescission period must be, but may be greater than, three business days after the date of the purchase agree-

ment. The notice must:

(1) Be located close to the signature line.

(2) Be printed in twelve point boldface type.

(3) State that **“YOU, THE PURCHASER, HAVE THE RIGHT TO RESCIND THIS AGREEMENT AT ANY TIME PRIOR TO MIDNIGHT OF THE (INSERT RELEVANT NUMBER, NOT LESS THAN THREE) BUSINESS DAY AFTER THE DATE OF THIS AGREEMENT.”**

c. All moneys shall be refunded without penalty within ten days after rescision.

2. *Cancellation refund.*

a. A purchase agreement must include a statement that the purchaser has the right to cancel the agreement for the purchase of cemetery merchandise, funeral merchandise, and funeral services upon written demand and designate or appoint a trustee to hold, manage, invest, and distribute the trust assets.

b. If a purchase agreement is canceled, a purchaser requests a transfer of the trust assets upon cancellation of a purchase agreement, or another establishment provides merchandise or services designated in a purchase agreement, the seller shall refund or transfer within thirty days of receiving a written demand no less than the purchase price of the applicable cemetery merchandise, funeral merchandise, and funeral services adjusted for inflation, using the consumer price index amounts announced by the commissioner annually, less any cancellation penalty set forth in the purchase agreement. The amount of the cancellation penalty shall not exceed ten percent of the purchase price of the applicable cemetery merchandise, funeral merchandise, and funeral services. The seller may also deduct the value of the cemetery merchandise, funeral merchandise, and funeral services already received by, delivered to, or warehoused for the purchaser.

c. A purchase agreement must include a statement that the purchaser is entitled to a refund of the purchase price of the applicable funeral merchandise adjusted for inflation, using the consumer price index amounts announced by the commissioner annually for any item of funeral merchandise that cannot be delivered to the location specified in the purchase agreement within forty-eight hours of notice of the individual's death, unless the delay is caused by weather conditions or a natural disaster. The seller must return such refund to the purchaser within thirty days of receiving the written demand.

3. This section does not prohibit a purchaser who is or may become eligible for benefits under Title XIX of the federal Social Security Act from making a guaranteed price purchase agreement irrevocable to the extent that federal law or regulations require that such an agreement be irrevocable for purposes of a purchaser's eligibility for benefits under Title XIX of the federal Social Security Act, as permitted under federal law. The sell-

er of credit sale agreements shall comply with the requirements of chapter 537, the Iowa consumer credit code, and is subject to the remedies and penalties provided in that chapter for noncompliance.

2001 Acts, ch 118, §37
NEW section

SUBCHAPTER VII

FRAUDULENT PRACTICES

523A.701 Misleading filings.

It is unlawful for a person to make or cause to be made, in any document filed with the commissioner or in any proceeding under this chapter, any statement of material fact which is, at the time and in the light of the circumstances under which it is made, false or misleading, or in connection with such statement, to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.

2001 Acts, ch 118, §38
NEW section

523A.702 Misrepresentations of government approval.

It is unlawful for a seller under this chapter to represent or imply in any manner that the seller has been sponsored, recommended, or approved, or that the seller's abilities or qualifications have in any respect been passed upon, by the commissioner.

2001 Acts, ch 118, §39
NEW section

523A.703 Fraudulent practices.

A person who commits any of the following acts commits a fraudulent practice and is punishable as provided in chapter 714:

1. Knowingly fails to comply with any requirement of this chapter.
2. Knowingly makes, causes to be made, or subscribes to a false statement or representation in a report or other document required under this chapter, implementing rules, or orders, or renders such a report or document misleading through the deliberate omission of information properly belonging in the report or document.
3. Conspires to defraud in connection with the sale of cemetery merchandise, funeral merchandise, funeral services, or a combination thereof under this chapter.
4. Fails to deposit funds under sections 523A.201 and 523A.202 or withdraws any funds in a manner inconsistent with this chapter.
5. Knowingly sells or offers cemetery merchandise, funeral merchandise, funeral services, or a combination thereof without an establishment permit.
6. Deliberately misrepresents or omits a material fact relative to the sale of cemetery merchandise, funeral merchandise, funeral services, or a

combination thereof under this chapter. When selling cemetery merchandise or funeral merchandise, a seller shall not exclude the funeral services necessary for the delivery, use, or installation of the cemetery merchandise or funeral merchandise at the time of the funeral or burial unless the purchase agreement expressly provides otherwise.

2001 Acts, ch 118, §40
NEW section

SUBCHAPTER VIII

ADMINISTRATION AND ENFORCEMENT

523A.801 Administration.

1. This chapter shall be administered by the commissioner. The deputy administrator appointed pursuant to section 502.601 shall be the principal operations officer responsible to the commissioner for the routine administration of this chapter and management of the administrative staff. In the absence of the commissioner, whether because of vacancy in the office due to absence, physical disability, or other cause, the deputy administrator shall, for the time being, have and exercise the authority conferred upon the commissioner. The commissioner may by order from time to time delegate to the deputy administrator any or all of the functions assigned to the commissioner in this chapter. The deputy administrator shall employ officers, attorneys, accountants, and other employees as needed for administering this chapter.

2. It is unlawful for the commissioner or any administrative staff to use for personal benefit any information which is filed with or obtained by the commissioner and which is not made public. This chapter does not authorize the commissioner or any such staff member to disclose any such information except among themselves or to other cemetery and funeral administrators, regulatory authorities, or governmental agencies, or when necessary and appropriate in a proceeding or investigation under this chapter or as required by chapter 22. This chapter neither creates nor derogates any privileges that exist at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the commissioner or any administrative staff.

2001 Acts, ch 118, §41
NEW section

523A.802 Scope.

1. This chapter applies to any advertisement, sale, promotion, or offer made by a person to furnish, upon the future death of a person named or implied in a purchase agreement, cemetery merchandise, funeral merchandise, funeral services, or a combination thereof. Burial accounts and insurance policies are included if the account records or related documents identify the establishment that will provide the cemetery merchandise,

funeral merchandise, funeral services, or a combination thereof.

2. This chapter applies when a purchase agreement is executed within this state or an advertisement, promotion, or offer to furnish is made or accepted within this state. An offer to furnish is made within this state, whether or not either party is then present in this state, when the offer originates from this state or is directed by the offeror to this state and received by the offeree in this state through the mail, over the telephone, by the internet, or through any other means of commerce.

3. If a foreign person does not have a registered agent or agents in the state of Iowa, doing business within this state shall constitute the person's appointment of the secretary of state of the state of Iowa to be its true and lawful attorney upon whom may be served all lawful process of original notice in actions or proceedings arising or growing out of any contract or tort.

2001 Acts, ch 118, §42
NEW section

523A.803 Investigations and subpoenas.

1. The commissioner may, for the purpose of discovering violations of this chapter, implementing rules, or orders issued under this chapter:

a. Make such public or private investigations within or outside of this state as the commissioner deems necessary to determine whether any person has violated or is about to violate this chapter, implementing rules, or orders issued under this chapter, or to aid in enforcement of this chapter or in the prescribing of rules and forms under this chapter.

b. Require or permit any person to file a statement in writing, under oath or otherwise as the commissioner or attorney general determines, as to all the facts and circumstances concerning the matter to be investigated.

c. Notwithstanding chapter 22, keep confidential the information obtained in the course of an investigation. However, if the commissioner determines that it is necessary or appropriate in the public interest or for the protection of the public, the commissioner may share information with other administrators, regulatory authorities, or governmental agencies, or may publish information concerning a violation of this chapter, implementing rules, or orders issued under this chapter.

d. Investigate the establishment and examine the books, accounts, papers, correspondence, memoranda, purchase agreements, files, or other documents or records used by every applicant and permit holder under this chapter.

e. Administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, accounts, papers, correspondence, memoranda, purchase agreements, files, or other documents or records which the commissioner deems relevant or

material to any investigation or proceeding under this chapter and implementing rules, all of which may be enforced under chapter 17A.

f. Apply to the district court for 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.

2. The commissioner may issue and bring an action in district court to enforce subpoenas within this state at the request of an agency or administrator of another state, if the activity constituting an alleged violation for which the information is sought would be a violation of this chapter had the activity occurred in this state.

2001 Acts, ch 118, §43
NEW section

523A.804 Mediation.

The commissioner may order an establishment to participate in mediation in any dispute regarding a purchase agreement. Mediation performed under this section shall be conducted by a mediator appointed by the commissioner and shall comply with the provisions of chapter 679C.

Mediation of these disputes shall include attendance at a mediation session with the mediator and the parties to the dispute, listening to the mediator's explanation of the mediation process, presentation of one party's view of the dispute, and listening to the response of the other party. Participation in mediation does not require that the parties reach a mediation agreement.

Parties to the mediation shall have the right to advice and presence of counsel at all times. The parties to the mediation shall present any mediation agreement reached through the mediation to the commissioner. If a mediation agreement is not reached, the mediator shall file a report with the commissioner. The costs of the mediation shall be approved by the commissioner and shall be borne by the insurance division's regulatory fund.

2001 Acts, ch 118, §44
NEW section

523A.805 Cease and desist orders — injunctions.

If it appears to the commissioner that a person has engaged or is about to engage in an act or practice constituting a violation of this chapter, implementing rules, or orders issued under this chapter, the commissioner or the attorney general may do either or both of the following:

1. Issue a summary order directed at the person requiring the person to cease and desist from engaging in such act or practice. A person may request a hearing within thirty days of issuance of the summary order. If a hearing is not timely re-

requested, the summary order shall become final by operation of law. The order shall remain effective from the date of issuance until the date the order becomes final by operation of law or is overturned by a presiding officer following a request for hearing. Section 17A.18A is inapplicable to summary cease and desist orders issued under this section.

2. Bring an action in the district court in any county of the state for an injunction to restrain a person subject to this chapter and any agents, employees, or associates of the person from engaging in conduct or practices deemed contrary to the public interest. In any proceeding for an injunction, the commissioner or attorney general may apply to the court for a subpoena to require the appearance of a defendant and the defendant's agents and for any books, accounts, papers, correspondence, memoranda, purchase agreements, files, or other documents or records germane to the hearing upon the petition for an injunction. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver may be appointed for the defendant or the defendant's assets. The commissioner or attorney general shall not be required to post a bond.

2001 Acts, ch 118, §45
NEW section

523A.806 Court action for failure to cooperate.

If a person fails or refuses to file any statement or report or to produce any books, accounts, papers, correspondence, memoranda, purchase agreements, files, or other documents or records, or to obey any subpoena issued by the commissioner, the commissioner may refer the matter to the attorney general, who may apply to a district court to enforce compliance. The court may order any or all of the following:

1. Injunctive relief, restricting or prohibiting the offer or sale of cemetery merchandise, funeral merchandise, funeral services, or a combination thereof.
2. Revocation or suspension of any permit issued under this chapter.
3. Production of documents or records including but not limited to books, accounts, papers, correspondence, memoranda, purchase agreements, files, or other documents or records.
4. Such other relief as may be required.

Such an order shall be effective until the person files the statement or report or produces the documents requested, or obeys the subpoena.

2001 Acts, ch 118, §46
NEW section

523A.807 Prosecution for violations of law.

1. A violation of this chapter or rules adopted or orders issued under 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 injunctive relief and penalties, apply to violations of this chapter.

2. If the commissioner believes that grounds exist for the criminal prosecution of persons subject to this chapter for violations of this chapter or any other law of this state, the commissioner may forward to the attorney general or the county attorney the grounds for the belief, including all evidence in the commissioner's possession, so that the attorney general or the county attorney may proceed with the matter as deemed appropriate.

2001 Acts, ch 118, §47
NEW section

523A.808 Cooperation with other agencies.

1. To encourage uniform interpretation and administration of this chapter and effective regulation of the sale of cemetery merchandise, funeral merchandise, and funeral services, the commissioner may cooperate with any governmental law enforcement or regulatory agency.

2. This cooperation includes but is not limited to:

- a. Making a joint examination or investigation.
- b. Holding a joint administrative hearing.
- c. Filing and prosecuting a joint civil or administrative proceeding.
- d. Sharing and exchanging personnel.
- e. Sharing and exchanging relevant information and documents.
- f. Formulating, in accordance with chapter 17A, rules or proposed rules on matters such as statements of policy, regulatory standards, guidelines, and interpretive opinions.

2001 Acts, ch 118, §48
NEW section

523A.809 Rules, forms, and orders.

1. Under chapter 17A, the commissioner may from time to time make, amend, and rescind such rules, forms, and orders as are necessary or appropriate for the protection of purchasers and the public and to administer the provisions of this chapter, its implementing rules, and orders issued under this chapter.

2. A rule, form, or order shall not be made, amended, or rescinded unless the commissioner finds that the action is necessary or appropriate in the public interest or for the protection of purchasers and consistent with the purposes fairly intended by the policies and provisions of this chapter, its implementing rules, and orders issued under this chapter.

3. A provision of this chapter imposing any liability does not apply to any act done or omitted in good faith in conformity with any rule, form, or order of the commissioner, notwithstanding that the rule, form, or order may later be amended or rescinded or be determined by judicial or other au-

thority to be invalid for any reason.

2001 Acts, ch 118, §49
NEW section

523A.810 Date of filing — interpretive opinions.

1. A document is filed when it is received by the commissioner.

2. Requests for interpretive opinions may be granted in the commissioner's discretion.

2001 Acts, ch 118, §50
NEW section

523A.811 Receiverships.

1. The commissioner shall notify the attorney general of the potential need for establishment of a receivership if the commissioner finds that a seller subject to this chapter meets one or more of the following conditions:

a. Is insolvent.

b. Has utilized trust funds for personal or business purposes in a manner inconsistent with this chapter.

c. The amount of funds currently held in trust for cemetery merchandise, funeral merchandise, and funeral services is less than eighty percent of all payments made under the purchase agreements referred to in section 523A.201.

d. Has refused to pay any just claim or demand based on a purchase agreement referred to in section 523A.201.

e. The commissioner finds upon investigation that a seller is unable to pay any claim or demand based on a purchase agreement which has been legally determined to be just and outstanding.

2. The commissioner or attorney general may apply to the district court in any county of the state for the establishment of a receivership. Upon proof of any of the grounds for a receivership described in this section, the court may grant a receivership.

2001 Acts, ch 118, §51
NEW section

523A.812 Insurance division 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.204, two dollars for each purchase 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.204 shall be deposited into the general fund of the state. 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, the expenses of mediation ordered by the commission-

er, consumer education expenses, the expenses of a toll-free telephone line to receive consumer complaints, and the expenses of receiverships established under section 523A.811. An annual allocation to the regulatory fund shall not be imposed if the current balance of the fund exceeds two hundred thousand dollars.

2001 Acts, ch 118, §52
NEW section

523A.813 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.

2001 Acts, ch 118, §53
NEW section

SUBCHAPTER IX

LIQUIDATION PROCEDURES

523A.901 Liquidation.

1. *Grounds for liquidation.* The commissioner may petition the district court for an order directing the commissioner to liquidate an establishment on either of the following grounds:

a. The establishment did not deposit funds pursuant to section 523A.201 or withdrew funds in a manner inconsistent with this chapter and is insolvent.

b. The establishment did not deposit funds pursuant to section 523A.201 or withdrew funds in a manner inconsistent with this chapter and the condition of the establishment is such that further transaction of business would be hazardous, financially or otherwise, to purchasers or the public.

2. *Liquidation order.*

a. An order to liquidate the business of an establishment shall appoint the commissioner as liquidator and shall direct the liquidator to immediately take possession of the assets of the 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 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 re-

order of deeds.

b. Upon issuance of an order, the rights and liabilities of an establishment and of the establishment's creditors, purchasers, owners, and other persons interested in the 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 an establishment'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 establishment's obligations during the pendency of an appeal. The plan shall provide for the continued performance of purchase agreements 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 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 purchasers and claimants over creditors and interested parties as well as other purchasers and claimants, as the commissioner finds to be fair and equitable considering the relative circumstances of such purchasers 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 reason-

able 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 establishment all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of the establishment. If the property of the 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 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, accounts, papers, correspondence, memoranda, purchase agreements, files, or other documents or records which the liquidator deems relevant to the inquiry.

(6) Collect debts and moneys due and claims belonging to the 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 establishment.

(8) Use assets of the establishment under a liquidation order to transfer obligations of purchase agreements to a solvent establishment, if the transfer can be accomplished without prejudice to the applicable priorities under subsection 18.

(9) Acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of or deal with property of the 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 establishment's assets or without security and exe-

cute 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 establishment is a party.

(12) Continue to prosecute and to institute in the name of the 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, purchasers, or owners against an officer of the establishment or any other person.

(14) Remove records and property of the 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 the recorder of deeds or record office in this state or elsewhere where property of the establishment is located.

(18) Assert defenses available to the establishment against third persons including statutes of limitations, statutes of fraud, and the defense of usury. A waiver of a defense by the 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, purchaser, 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 both of the following:

(1) Mailing notice, by first-class mail, to all persons known or reasonably expected to have

claims against the establishment, including purchasers, at their last known address as indicated by the records of the establishment.

(2) Publication of notice in a newspaper of general circulation in the county in which the 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 subsection, the distribution of assets of the 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 issuance of an order appointing a liquidator of an establishment, an action at law or equity shall not be brought against the establishment within 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 establishment necessitates intervention in an action against the 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 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 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 has 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 or permitted to the 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 limitations or defense of laches shall not run with respect to an action against an establishment between the filing of a petition for

liquidation against the establishment and the denial of the petition. An action against the 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 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 of a proposal 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 an 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 an establishment ordered to be liquidated under this chapter may be avoided by the liquidator, 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 present fair equivalent value 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, lien, 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 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 perfected.

(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 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 is 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 recording or* 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 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 liquidator takes possession of the property of the establishment or an order of liquidation is granted:

(1) A transfer of the property, other than real property, of the 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.

(2) If acting in good faith, a person indebted to the establishment or holding property of the establishment may pay the debt or deliver the property, or any part of the property, to the establishment or upon the 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 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 establishment or any benefit of the property of the 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 an establishment to or for the benefit of a

creditor for an antecedent debt made or suffered by the 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 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 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 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 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 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 the present 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 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 may become superior to the rights of a transferee, or a purchaser may obtain rights superior to the rights of a transferee within the meaning of paragraph "b", if such consequences 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 which is voidable under paragraph "a", subparagraph (2), has been dissolved by the furnishing of a bond or other obligation, the surety of which has been indemnified directly or indirectly by the transfer or the creation of a lien upon property of an establishment before the filing of a petition under this chapter which results in the 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 a 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 establishment's estate, and afterward in good faith gives the 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, an 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 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 provisions of paragraph "a", subparagraph (2), subparagraph subdivision (d).

k. (1) An officer, manager, employee, shareholder, subscriber, attorney, or other person acting on behalf of the establishment who knowingly participates in giving any preference when the person has reasonable cause to believe the 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 infer-

ence 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 establishment or the benefit of the property of the 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 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 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 an establishment entered after the date of filing of a successful petition for liquidation, or a judgment or order against the 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 an establishment before the filing of the petition need not be consid-

ered 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 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 an 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 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 the 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 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) Actual and necessary costs of preserving or recovering the assets of the establishment.

(2) Compensation for all authorized services rendered in the liquidation.

(3) Necessary filing fees.

(4) Fees and mileage payable to witnesses.

(5) Authorized reasonable attorney 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 purchase agreements.

d. Class 4. Claims of general creditors.

e. Class 5. Claims of the federal or of 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 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 ensure 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 to the person's legal representative upon proof satisfactory to the treasurer of state of the right to the funds. Any 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 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 to 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 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 an establishment in the 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 liquidator’s books.* The court may order audits to be made of the books of the commissioner relating to a liquidation 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 liquidation 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 liquidation.

2001 Acts, ch 118, §54

*The words “recorder of” probably intended; corrective legislation is pending

NEW section

CHAPTER 523E

CEMETERY MERCHANDISE

Repealed by 2001 Acts, ch 118, §57; see chapter 523A

CHAPTER 523F

LEGAL EXPENSE INSURANCE

Repealed by 2001 Acts, ch 16, §36, 37

Repeal is effective January 1, 2002; 2001 Acts, ch 16, §37

CHAPTER 523H

FRANCHISES

523H.1 Definitions.

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

1. “*Affiliate*” means a person controlling, controlled by, or under common control with another person, every officer or director of such a person, and every person occupying a similar status or performing similar functions.

2. “*Business day*” means a day other than a

Saturday, Sunday, or federal holiday.

3. a. “*Franchise*” means either of the following:

(1) An oral or written agreement, either express or implied, which provides all of the following:

(a) Grants the right to distribute goods or provide services under a marketing plan prescribed or suggested in substantial part by the franchisor.

(b) Requires payment of a franchise fee to a franchisor or its affiliate.

(c) Allows the franchise business to be substantially associated with a trademark, service mark, trade name, logotype, advertisement, or other commercial symbol of or designating the franchisor or its affiliate.

(2) A master franchise.

b. “*Franchise*” does not include any business that is operated under a lease or license on the premises of the lessor or licensor as long as such business is incidental to the business conducted by the lessor or licensor on such premises, including, without limitation, leased departments, licensed departments, and concessions and the leased or licensed department operates only under the trademark, trade name, service mark, or other commercial symbol designating the lessor or licensor.

c. “*Franchise*” also does not include any contract under which a petroleum retailer or petroleum distributor is authorized or permitted to occupy leased marketing premises, which premises are to be employed in connection with the sale, consignment, or distribution of motor fuel under a trademark which is owned or controlled by a refiner which is regulated by the federal Petroleum Marketing Practices Act, 15 U.S.C. § 2801 et seq. The term “*refiner*” means any person engaged in the refining of crude oil to produce motor fuel, and includes any affiliate of such person. “*Franchise*” also does not include a contract entered into by any person regulated under chapter 123, 322, 322A, 322B, 322C, 322D, 322F, 522B, or 543B, or a contract establishing a franchise relationship with respect to the sale of construction equipment, lawn or garden equipment, or real estate.

4. “*Franchise fee*” means a direct or indirect payment to purchase or operate a franchise. Franchise fee does not include any of the following:

a. Payment of a reasonable service charge to the issuer of a credit card by an establishment accepting the credit card.

b. Payment to a trading stamp company by a person issuing trading stamps in connection with a retail sale.

c. An agreement to purchase at a bona fide wholesale price a reasonable quantity of tangible goods for resale.

d. The purchase or agreement to purchase, at a fair market value, any fixtures, equipment, leasehold improvements, real property, supplies, or other materials reasonably necessary to enter into or continue a business.

e. Payments by a purchaser pursuant to a bona fide loan from a seller to the purchaser.

f. Payment of rent which reflects payment for the economic value of leased real or personal property.

g. The purchase or agreement to purchase promotional or demonstration supplies, materials, or equipment furnished at fair market value and not intended for resale.

5. “*Franchisee*” means a person to whom a franchise is granted. Franchisee includes the following:

a. A subfranchisor with regard to its relationship with a franchisor.

b. A subfranchisee with regard to its relationship with a subfranchisor.

6. “*Franchisor*” means a person who grants a franchise or master franchise, or an affiliate of such a person. Franchisor includes a subfranchisor with regard to its relationship with a franchisee, unless stated otherwise in this chapter.

7. “*Marketing plan*” means a plan or system concerning a material aspect of conducting business. Indicia of a marketing plan include any of the following:

a. Price specification, special pricing systems, or discount plans.

b. Sales or display equipment or merchandising devices.

c. Sales techniques.

d. Promotional or advertising materials or cooperative advertising.

e. Training regarding the promotion, operation, or management of the business.

f. Operational, managerial, technical, or financial guidelines or assistance.

8. “*Master franchise*” means an agreement by which a person pays a franchisor for the right to sell or negotiate the sale of franchises.

9. “*Offer*” or “*offer to sell*” means every attempt to offer or to dispose of, or solicitation of an offer to buy, a franchise or interest in a franchise for value.

10. “*Person*” means a person as defined in section 4.1, subsection 20.

11. “*Sale*” or “*sell*” means every contract or agreement of sale of, contract to sell or disposition of, a franchise or interest in a franchise for value.

12. “*Subfranchise*” means an agreement by which a person pays a franchisor for the right to sell or negotiate the sale of franchises.

13. “*Subfranchisee*” means a person who is granted a franchise from a subfranchisor.

14. “*Subfranchisor*” means a person who is granted a master franchise.

2001 Acts, ch 16, §13, 37

2001 amendment to subsection 3, paragraph c, takes effect January 1, 2002; 2001 Acts, ch 16, §37

Subsection 3, paragraph c amended

CHAPTER 523I

CEMETERIES

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 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.102, subsections 5, 13, and 14.

Section not amended; internal reference changes applied

CHAPTER 524

BANKS

524.905 Printed in Addendum.

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 loan documentation recordkeeping functions may be located at an authorized bank office or at any other location ap-

proved by the superintendent.

4. Notwithstanding any of the other provisions of this section, original trust recordkeeping functions may be located at an authorized bank office or at any other location approved by the superintendent.

For future amendments to subsection 1 effective July 1, 2004, see 2001 Acts, ch 4, §1, 11

Section not amended; footnote added

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 any number of bank offices within the municipal corporation or urban complex in which the principal place of business of the bank is located.

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. 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.

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.

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 are 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 and 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*”.

4. Notwithstanding other restrictions in this chapter to the contrary, a state bank may, subject to the approval of the superintendent, establish up to three bank offices at any location in Iowa in addition to the bank offices that may be established pursuant to other provisions of this chapter.

5. Notwithstanding any other restrictions in this chapter to the contrary, a branch of an out-of-state national bank or a branch of an out-of-state state bank may establish up to three bank offices at any location in Iowa in addition to the bank offices that may be established pursuant to other provisions of this chapter, provided that no more than a total of three such bank offices may be established by all branches collectively of an out-of-

state national bank or an out-of-state state bank.

2001 Acts, ch 4, §2, 12
For future repeal of this section effective July 1, 2004, see 2001 Acts, ch 4, §10, 11
NEW subsections 4 and 5

524.1204 Privileges extended to national banks.

The privileges extended to state banks by section 524.1201, 524.1202 and 524.1212 and chapter 527 shall be available on the same conditions to national banks to the extent they are so authorized by federal law.

For future amendments to this section effective July 1, 2004, see 2001 Acts, ch 4, §3, 11
Section not amended; footnote added

524.1205 Establishment of branch or office in other state — superintendent’s authority to regulate.

1. Notwithstanding section 524.1201, subsection 1, and section 524.1202, subsection 2, paragraph “*b*”, upon application to and approval by the superintendent, a state bank may acquire in any manner, establish, maintain, operate, retain, or relocate a branch or office in a state other than this state. Subject to the approval of the superintendent, such branch or office may engage in any activity authorized for a branch or office of a bank organized under the laws of that other state.

2. The superintendent shall supervise and regulate all out-of-state branches and offices of a state bank.

3. Sections 524.1201 and 524.1203 apply to an out-of-state branch or office of a state bank except as otherwise provided by the laws of the state in which a branch or office is located or by the superintendent pursuant to this section.

4. This section does not authorize or permit a state-chartered bank located outside of this state or a national bank located outside of this state to establish a de novo branch or office in this state.

2001 Acts, ch 4, §4, 12
For future amendments to this section effective July 1, 2004, see 2001 Acts, ch 4, §5, 11
Section amended

524.1212 Location of satellite terminals.

Any state bank may utilize a satellite terminal, as defined in section 527.2, when that satellite terminal is lawfully being operated, at any location within this state. A satellite terminal which complies with the requirements of chapter 527 is not a branch bank or an office of a bank and is not subject to the restrictions on location or number set forth in section 524.1202. Any transaction engaged in through the use of a satellite terminal shall be deemed to take place at the principal place of business of a bank whose accounts and records are affected by the transaction.

For future amendments to this section effective July 1, 2004, see 2001 Acts, ch 4, §6, 11
Section not amended; footnote added

524.1213 United community bank offices.

1. A bank may convert to a united community bank office as provided in this section.

2. A united community bank office formed under this section shall have a united community bank office board, at least one-half or more of the members of which shall be residents of the county in which the united community bank office is located. The liability of the united community bank office board shall be limited as provided in section 524.614. The bank establishing and operating the united community bank office may indemnify members of the united community bank office board as agents of the bank in the manner and in the instances authorized by sections 490.850 through 490.858.

3. Any two or more state banks, national banks, or state and national banks that are located in this state, that are affiliates as defined in section 524.1101, and that individually have been in existence and operated as banks continuously in this state for at least five years, may be merged or consolidated into a single state or national bank, and the resulting entity shall be a "*united community bank*". The resulting united community bank of the merger or consolidation:

a. Shall retain and operate as its principal place of business one of the principal places of business of the banks that are the parties to the merger or consolidation.

b. May retain and continue to operate as united community bank offices of the resulting bank any of the remaining principal places of business of the banks that are the parties to the merger or consolidation.

c. May retain and continue to operate as retained bank offices of the resulting united community bank any of the bank offices that are being operated as of the date of the merger or consolidation by any of the banks that are parties to the merger or consolidation.

d. May establish any number of additional bank offices within the municipal corporation or urban complex in which a united community bank office referred to in paragraph "*b*" is located.

e. May retain and continue to operate and may establish in conjunction with the resulting bank, or with any retained united community bank office, or with any other retained bank office, any facility authorized by section 524.1202, subsection 2, paragraph "*c*" or "*d*", and in operation at the time of the merger or consolidation or established after the merger or consolidation.

f. May relocate any principal place of business and any bank offices operated pursuant to this section by complying with other provisions of law applicable to relocation.

4. For purposes of subsection 3, the period of existence and operation of a bank shall be deemed continuous, notwithstanding any of the following:

a. Any direct or indirect change in the name,

ownership, or control of the bank.

b. Any rechartering of the bank, or any merger or consolidation with one or more banks.

c. The bank acquired its initial assets and liabilities from the federal deposit insurance corporation, or other transferor, pursuant to a purchase and assumption transaction or any other type of transaction involving the transfer of ownership of a failed bank or other bank.

5. For purposes of subsection 3, a bank that has been chartered solely for the purpose of, and does not open for business prior to, acquiring control of, or acquiring all or substantially all of the assets of, one or more branches owned and operated on January 1, 1997, by a savings association, as defined in 12 U.S.C. § 1813, which association is an affiliate of the bank, is deemed to have been in continuous existence and operation as a bank for the combined periods of continuous existence and operation of the bank and the savings association from which the branch or branches were acquired.

6. For purposes of subsection 3, a bank that results from the conversion of a state savings association or federal savings association, as defined in 12 U.S.C. § 1813, is deemed to have been in continuous existence and operation as a bank for the combined periods of continuous existence and operation of the bank and the association from which it was converted.

7. For purposes of subsection 3, a bank that has been chartered solely for the purpose of, and does not open for business prior to, acquiring control of, or acquiring all or substantially all of the assets of, a bank located in this state is deemed to have been in existence and operation for the same period of time as the bank which is acquired.

8. All united community bank offices and other bank offices retained by the resulting bank of a merger or consolidation under the authority of this section shall be deemed bank offices established under the authority of section 524.1201 for all intents and purposes of this chapter, except as is otherwise expressly provided in this section.

9. A bank that is converted to the principal place of business or to a united community bank office as a result of a merger or consolidation under subsection 3 that occurs after January 1, 2001, may establish any number of additional bank offices that could have been established by the bank pursuant to section 524.1202, subsection 4, prior to the merger or consolidation.

10. This section does not alter the limitations upon bank holding companies contained in section 524.1802.

11. This section shall be strictly construed as an exception to the bank office limitations contained in section 524.1202. It is the intent of the general assembly that a court or regulatory agency shall not deem, construe, or interpret this section to permit statewide branch banking or to

permit the establishment of a bank office at any location in this state unless specifically authorized by this section or section 524.312 or 524.1202.

12. This section does not authorize the establishment of a bank office or an integral facility at any time by any bank except as a direct and immediate consequence of a merger or consolidation of two or more affiliated banks and as expressly permitted by subsection 3. This section does not authorize the resulting bank of a merger or consolidation to establish or retain any united community bank office, bank office, or integral facility at any location other than those expressly permitted by subsection 3, or to preserve any business location acquired in the merger or consolidation for subsequent use.

13. As used in this section, the term “bank”

does not include any entity unless it is chartered as a state or national bank and is authorized by its bylaws to, and actually does, accept deposits, pay checks, and make commercial loans.

2001 Acts, ch 4, §7, 12

For future repeal of this section effective July 1, 2004, see 2001 Acts, ch 4, §10, 11

NEW subsection 9 and former subsections 9 – 12 renumbered as 10 – 13

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.

For future amendments to this section effective July 1, 2004, see 2001 Acts, ch 4, §§, 11

Section not amended; footnote added

CHAPTER 533

CREDIT UNIONS

533.55 Superintendent.

1. The superintendent shall be appointed by the governor, subject to confirmation by the senate, and shall possess a minimum of five years' credit union experience.

2. The superintendent may appoint assistants, examiners, and other employees as the superintendent deems necessary to the proper discharge of duties imposed upon the superintendent by the laws of this state. Pay plans shall be established for employees, other than clerical employees, who examine the accounts and affairs of credit unions and who examine the accounts and

affairs of other persons, subject to supervision and regulation by the superintendent, that are substantially equivalent to those paid by the national credit union administration and other federal supervisory agencies in this area of the United States.

3. The superintendent may adopt rules as necessary or appropriate to implement this chapter, subject to the prior approval of the rules by the board.

2001 Acts, ch 76, §1
Subsection 2 amended

CHAPTER 534

SAVINGS AND LOAN ASSOCIATIONS

534.214 Investment in and by banks.

1. *Investment in banks.* A holding company, association, or service corporation may invest in the capital stock, obligations, or other securities of a bank with the prior approval of the superintendent of savings and loan associations.

2. *Investment by banks.* Notwithstanding sections 524.802 and 524.901, subsection 3, a bank holding company, bank, or bank service corporation may, with the prior approval of the superintendent of banking, invest in the capital stock, obligations or other securities of a state association.

The superintendent of banking shall not approve an investment under this subsection if upon making the investment the entity making the investment directly or indirectly would own or control more than twenty-five percent of the voting

shares of a savings and loan association or would have the power to control in any manner the election of a majority of the directors of a savings and loan association, unless the superintendent of banking first determines either that the association in which the investment is to be made has only those office locations which a bank would be authorized under section 524.1202 to apply for and have approved on the effective date of the proposed investment, or that all nonconforming office locations were in existence and operating on July 1, 1982. If such an investment is approved by the superintendent of banking, the association so owned or controlled shall not subsequently establish any additional office locations except one which a bank would be authorized under section 524.1202 to apply for and have approved on the

date which the proposed office location would commence operations.

3. *Contingencies.* An association or service corporation may make an investment under subsection 1 only if at the time of the investment either an insured bank or a bank service corporation owned by one or more insured banks would be permitted to make an investment under substantially the same circumstances in an insured state association under all applicable laws and regulations of the United States. A bank or bank service corporation may make an investment under subsection 2 only if at the time of the investment either an insured state association or a service corporation owned by one or more insured associations would be permitted to make an investment under substantially the same circumstances in an insured bank under all applicable laws and regulations of the United States. The ability of an organization to merge with another organization is not relevant in determining whether an organization is permitted to invest in another organization.

4. *Bank as holding company.* No bank shall directly or indirectly acquire ownership or control of more than twenty-five percent of the voting shares of any savings and loan association, or the power to control in any manner the election of a majority of the directors of any savings and loan association, if upon such acquisition the associations so owned or controlled by the bank would have, in the aggregate, more than eight percent of the total deposits, both time and demand, of all associations in this state, as determined by the superintendent of banking on the basis of the most recent reports of the associations in the state to their supervisory authorities which are available at the time of the acquisition.

5. *Definitions.* For purposes of this section an “insured bank” is a bank whose deposits are insured in part by the bank insurance fund of the federal deposit insurance corporation; a “bank service corporation” is as defined by, and in accordance with, the laws of the United States, and the “superintendent of banking” is the person appointed pursuant to section 524.201.

6. *Findings required.* The superintendent of savings and loan associations shall not grant an approval under subsection 1, and the superintendent of banking shall not grant an approval under subsection 2 except after making one of the two following findings:

a. Based on a preponderance of the evidence presented, the proposed investment will not have the immediate effect of significantly reducing competition between depository financial institutions located in the same community as the institution whose shares would be acquired.

b. Based on a preponderance of the evidence presented, the proposed investment would have the anticompetitive effect specified in paragraph “a” of this subsection, but that other factors, to be

specifically cited, outweigh the anticompetitive effect so that there would be a net public benefit as a result of the investment.

7. *Competition preserved.* The subsequent liquidation of a bank or state association whose shares are acquired under this section shall not prevent the subsequent incorporation of another bank in the same community, and the superintendent of banking shall not find the liquidation to be grounds for disapproving the incorporation of another bank in the same community under section 524.305, and shall not prevent the subsequent incorporation of another association in the same community, and the superintendent of savings and loan associations shall not find the liquidation to be grounds for disapproving the incorporation of another association in the same community under this chapter.

For future amendments to subsection 2 effective July 1, 2004, see 2001 Acts, ch 4, §9, 11

Section not amended; footnote added

534.605 Transactions of officers, directors, employees.

It shall be unlawful for an officer, director or employee of an association:

1. To solicit, accept or agree to accept, directly or indirectly, from any person other than the association any gratuity, compensation or other personal benefit for any action taken by the association or for endeavoring to procure any such action.

2. To make a real estate loan or real estate contract to a director, officer, or employee of the association, or to an attorney or firm of attorneys regularly serving the association in the capacity of attorney at law, or to a partnership in which a director, officer, employee, attorney, or firm of attorneys has an interest, without the prior notification of the superintendent, fifteen days prior to closing the loan or executing the contract, who may prohibit the proposed transaction by order. A real estate loan or real estate contract shall not be made to a corporation in which any of the parties are stockholders, except that with the prior approval of its board of directors a real estate loan or real estate contract may be made to a corporation in which a party owns no more than fifteen percent of the total outstanding stock and in which the stock owned by all the parties does not exceed twenty-five percent of the total outstanding stock. However, this section does not prohibit an association from making loans pursuant to sections 534.202 and 534.208 and loans on the security of a first lien on the home property or manufactured or mobile home owned and occupied by a director, officer, or employee of an association, or by an attorney or member of a firm of attorneys regularly serving the association in the capacity of attorney at law.

A loan made to an affiliated party is subject to the association’s normal lending policies and procedures, and shall be approved by a two-thirds

vote of the directors, the interested director not voting.

3. To have any interest, direct or indirect, in the purchase at less than its face value of any evidence of a savings liability or other indebtedness issued by the association or other assets at less than their fair market value.

4. An association operating under this chapter

may indemnify any present or former director, officer, or employee in the manner and in the instances authorized in sections 490.850 through 490.858. If the association is a mutual association, the references in those sections to stockholder shall be deemed to be references to members.

2001 Acts, ch 153, §15; 2001 Acts, ch 176, §80
Terminology change applied

CHAPTER 536

REGULATED LOANS

536.26 Insured loans.

A licensee shall not, directly or indirectly, sell or offer for sale any life or accident and health insurance in connection with a loan made under this chapter except as and to the extent authorized by this section. Life, accident and health insurance, or any of them, may be written by a licensed insurance producer upon or in connection with any loan for a term not extending beyond the final maturity date of the loan contract, but only upon one obligor on any one loan contract.

The amount of life insurance shall at no time exceed the unpaid balance of principal and interest combined which are scheduled to be outstanding under the terms of the loan contract or the actual amount unpaid on the loan contract, whichever is greater.

Accident and health insurance shall provide benefits not in excess of the unpaid balance of principal and interest combined which are scheduled to be outstanding under the terms of the loan contract and the amount of each periodic benefit payment shall not exceed the total amount payable divided by the number of installments and shall provide that if the insured obligor is disabled, as defined in the policy, for a period of more than fourteen days, benefits shall commence as of the first day of disability.

The premium, which shall be the only charge for such insurance, shall not exceed that approved by

the commissioner of insurance of the state of Iowa as filed in the office of such commissioner. Such charge, computed at the time the loan is made for the full term of the loan contract on the total amount required to pay principal and interest.

If a borrower procures insurance by or through a licensee, the licensee shall cause to be delivered to the borrower a copy of the policy within fifteen days from the date such insurance is procured. No licensee shall decline new or existing insurance which meets the standards set out herein nor prevent any obligor from obtaining such insurance coverage from other sources.

If the loan contract is prepaid in full by cash, a new loan, or otherwise (except by the insurance) any life, accident and health insurance procured by or through a licensee shall be canceled and the unearned premium shall be refunded. The amount of such refund shall represent at least as great a proportion of the insurance premium or identifiable charge as the sum of the consecutive monthly balances of principal and interest of the loan contract originally scheduled to be outstanding after the installment date nearest the date of prepayment bears to the sum of all such monthly balances of the loan contract originally scheduled to be outstanding.

2001 Acts, ch 16, §33, 37
2001 amendment to unnumbered paragraph 1 takes effect January 1, 2002; 2001 Acts, ch 16, §37
Unnumbered paragraph 1 amended

CHAPTER 536A

INDUSTRIAL LOANS

536A.23 Powers of industrial loan companies.

No industrial loan company licensed under the provisions of this chapter shall have the power and authority to:

1. Charge, receive or collect interest at a rate exceeding ten cents on the hundred by the year, except that the interest may be computed when the note is made on the full amount of the cash ad-

vanced on the loan from the date of the note to the date of the final installment thereof, and the interest so computed may be included in the note, notwithstanding any agreement to pay the entire amount in installments; or the interest may be computed on the amount of the note and discounted or collected in advance when the loan is made, notwithstanding any agreement to pay the entire amount in installments. If the note is re-

payable in other than equal monthly installments, the interest may be an amount computed on the basis of the effective rates permitted as provided above; provided, however, there shall be no compounding of interest and when an interest rate as authorized herein is advertised, or negotiated for with a prospective borrower, with intent that it be computed by either of the two methods authorized herein, they being the “add on” method or the “discount” method, in such case such rate shall be further described as to the method of computation to be used, but interest computed by either method shall be stated to the borrower as provided in section 537.3210.

If a borrower elects to repay a loan secured by a mortgage or deed of trust upon real property which is a single-family or two-family dwelling or agricultural land at a date earlier than is required by the terms of the loan, the licensee shall be governed by section 535.9.

The limitation on interest rate which is contained in this subsection shall not apply to any loan in which the borrower is a corporation or investment trust or any other person who is referred to in section 535.2, subsection 2.

2. Charge, receive, or collect in advance, a service charge in excess of one dollar for each fifty dollars of the amount of the note, not to exceed a total of one hundred twenty dollars.

3. Require any borrower to purchase insurance from the lender as a condition for obtaining a loan. However, an industrial loan company may collect from the borrower, at the option of the borrower, and transmit the premiums charged for insuring real or personal property used by the borrower as security for a loan and provided that such insurance is obtained from a licensed insurance producer for an insurance company authorized to do business in Iowa; and the premiums charged for

insuring the life of one party on the loan in an amount not to exceed the total amount of the note or contract, including cash advance, interest and service charge, provided that no licensee shall require that the contract of life insurance be outstanding for more than the unpaid balance of the indebtedness and provided that such insurance is obtained from a licensed insurance producer for an insurance company authorized to do business in Iowa; and an industrial loan company may receive and transmit the premiums charged for accident and health insurance on the borrower, provided such insurance bears a reasonable relationship to the existing hazards or risk of loss, and the aggregate benefits of which shall not exceed the approximate amount of the contractual payments on the loan outstanding at the time of loss, and provided that such insurance is obtained from a licensed producer for an insurance company authorized to do business in Iowa. However, all life insurance rates in connection with industrial loans shall be subject to the rules and regulations of the insurance commissioner of the state of Iowa.

4. Industrial loan companies licensed under the provisions of this chapter may purchase notes, contracts, mortgages, accounts, receivables, leases and securities of a type and kind authorized by the superintendent.

5. In addition to the other charges authorized by this chapter, industrial loan companies licensed under this chapter may collect an appraisal fee on a loan secured by a mortgage or deed of trust upon real property, if the appraisal fee is bona fide, reasonable in amount, and not for purposes of circumvention or evasion of this chapter.

2001 Acts, ch 16, §34, 37
2001 amendment to subsection 3 takes effect January 1, 2002; 2001 Acts, ch 16, §37
Subsection 3 amended

CHAPTER 537

CONSUMER CREDIT CODE

Court action required for termination of installment contracts during military service; 2001 Acts, 2nd Ex, ch 1, §29, 31, 35, 36
Maximum rate of interest during military service on obligations or liabilities incurred prior to service;
2001 Acts, 2nd Ex, ch 1, §29, 34 – 36

537.3102 Scope.

Part 2 applies to disclosure with respect to consumer credit transactions, other than consumer rental purchase agreements, and the provision in section 537.3201 applies to a sale of an interest in land or a loan secured by an interest in land, without regard to the rate of finance charge, if the sale or loan is otherwise a consumer credit sale or consumer loan. Parts 3 and 4 apply, respectively, to disclosure, limitations on agreements and practices, and limitations on consumer's liability with respect to certain consumer credit transactions.

Part 5 applies to home solicitation sales. Part 6 applies to consumer rental purchase agreements.

2001 Acts, ch 24, §58
Section amended

537.3207 Form of insurance premium loan agreement.

An agreement pursuant to which an insurance premium loan is made shall contain the names of the insurance producer negotiating each policy or contract and of the insurer issuing each policy or contract, the number and inception date of, and

premium for, each policy or contract, the date on which the term of the loan begins, and a clear and conspicuous notice that each policy or contract may be canceled if payment is not made in accordance with the agreement. If a policy or contract has not been issued when the agreement is signed, the agreement may provide that the insurance producer may insert the appropriate information in the agreement and, if they do so, shall furnish the information promptly in writing to the insured.

2001 Acts, ch 16, §35, 37
2001 amendment takes effect January 1, 2002; 2001 Acts, ch 16, §37
Section amended

537.3308 Balloon payments.

1. Except as provided in subsection 2, if any scheduled payment of a consumer credit transaction is more than twice as large as the average of earlier scheduled payments, the consumer has the right to refinance the amount of that payment at the time it is due without penalty, as provided in section 537.2504. The terms of the refinancing shall be no less favorable to the consumer than the terms of the original transaction.

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

- a. A consumer lease.
- b. A transaction pursuant to open end credit.
- c. A transaction to the extent that the payment schedule is adjusted to the seasonal or irregular income or scheduled payments of obligations of the consumer.
- d. A transaction of a class defined by rule of the administrator as not requiring for the protection of the consumer a right to refinance as provided in this section.

e. A consumer loan in which the amount financed exceeds five thousand dollars and is secured by an interest in land.

f. A consumer rental purchase agreement.

g. A consumer loan secured by a certificate of title in a motor vehicle.

2001 Acts, ch 21, §1
Subsection 2, NEW paragraph g

537.5103 Creditor's obligations on repossession — restriction on deficiency judgments.

1. This section applies to a consumer credit sale of goods or services and a consumer loan. A consumer is not liable for a deficiency unless the creditor has disposed of repossessed or surrendered goods in good faith and in a commercially reasonable manner.

2. If the seller repossesses or voluntarily accepts surrender either of goods which were the subject of the sale and in which the seller has a security interest, or of goods which were not the subject of the sale but in which the seller has a security interest to secure a debt arising from a sale of goods or services or a combined sale of goods and services, the seller's duty to dispose of the collateral is governed by the provisions on disposition of collateral in chapter 554, article 9, part 6.

3. If a lender takes possession or voluntarily accepts surrender of goods in which the lender has a security interest to secure a debt arising from a consumer loan, the lender's duty to dispose of the collateral is governed by the provisions on disposition of collateral in chapter 554, article 9, part 6.

2000 Acts, ch 1149, §171, 187
2000 amendments to subsections 2 and 3 are effective July 1, 2001; 2000 Acts, ch 1149, §187
Subsections 2 and 3 amended

CHAPTER 537A

CONTRACTS

537A.10 Franchise agreements.

1. Definitions.

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

a. "Affiliate" means a person controlling, controlled by, or under common control with another person, every officer or director of such a person, and every person occupying a similar status or performing similar functions.

b. "Business day" means a day other than a Saturday, Sunday, or federal holiday.

c. (1) "Franchise" means either of the following:

(a) An oral or written agreement, either express or implied, which provides all of the following:

(i) Grants the right to distribute goods or provide services under a marketing plan prescribed

or suggested in substantial part by the franchisor.

(ii) Requires payment of a franchise fee to a franchisor or its affiliate.

(iii) Allows the franchise business to be substantially associated with a trademark, service mark, trade name, logotype, advertisement, or other commercial symbol of or designating the franchisor or its affiliate.

(b) A master franchise.

(2) "Franchise" does not include any business that is operated under a lease or license on the premises of the lessor or licensor as long as such business is incidental to the business conducted by the lessor or licensor on such premises, including, without limitation, leased departments, licensed departments, and concessions and the leased or licensed department operates only under the trademark, trade name, service mark, or other commer-

cial symbol designating the lessor or licensor.

(3) “*Franchise*” also does not include any contract under which a petroleum retailer or petroleum distributor is authorized or permitted to occupy leased marketing premises, which premises are to be employed in connection with the sale, consignment, or distribution of motor fuel under a trademark which is owned or controlled by a refiner which is regulated by the federal Petroleum Marketing Practices Act, 15 U.S.C. § 2801 et seq. The term “*refiner*” means any person engaged in the refining of crude oil to produce motor fuel, and includes any affiliate of such person. “*Franchise*” also does not include a contract entered into by any person regulated under chapter 123, 322, 322A, 322B, 322C, 322D, 322F, 522B, or 543B, or a contract establishing a franchise relationship with respect to the sale of construction equipment, lawn or garden equipment, or real estate.

d. “*Franchise fee*” means a direct or indirect payment to purchase or operate a franchise. Franchise fee does not include any of the following:

(1) Payment of a reasonable service charge to the issuer of a credit card by an establishment accepting the credit card.

(2) Payment to a trading stamp company by a person issuing trading stamps in connection with a retail sale.

(3) An agreement to purchase at a bona fide wholesale price a reasonable quantity of tangible goods for resale.

(4) The purchase or agreement to purchase, at a fair market value, any fixtures, equipment, leasehold improvements, real property, supplies, or other materials reasonably necessary to enter into or continue a business.

(5) Payments by a purchaser pursuant to a bona fide loan from a seller to the purchaser.

(6) Payment of rent which reflects payment for the economic value of leased real or personal property.

(7) The purchase or agreement to purchase promotional or demonstration supplies, materials, or equipment furnished at fair market value and not intended for resale.

e. “*Franchisee*” means a person to whom a franchise is granted. Franchisee includes the following:

(1) A subfranchisor with regard to its relationship with a franchisor.

(2) A subfranchisee with regard to its relationship with a subfranchisor.

f. “*Franchisor*” means a person who grants a franchise or master franchise, or an affiliate of such a person. Franchisor includes a subfranchisor with regard to its relationship with a franchisee, unless stated otherwise in this section.

g. “*Marketing plan*” means a plan or system concerning a material aspect of conducting business. Indicia of a marketing plan include any of the following:

(1) Price specification, special pricing sys-

tems, or discount plans.

(2) Sales or display equipment or merchandising devices.

(3) Sales techniques.

(4) Promotional or advertising materials or cooperative advertising.

(5) Training regarding the promotion, operation, or management of the business.

(6) Operational, managerial, technical, or financial guidelines or assistance.

h. “*Master franchise*” means an agreement by which a person pays a franchisor for the right to sell or negotiate the sale of franchises.

i. “*Offer*” or “*offer to sell*” means every attempt to offer or to dispose of, or solicitation of an offer to buy, a franchise or interest in a franchise for value.

j. “*Person*” means a person as defined in section 4.1, subsection 20.

k. “*Sale*” or “*sell*” means every contract or agreement of sale of, contract to sell or disposition of, a franchise or interest in a franchise for value.

l. “*Subfranchise*” means an agreement by which a person pays a franchisor for the right to sell or negotiate the sale of franchises.

m. “*Subfranchisee*” means a person who is granted a franchise from a subfranchisor.

n. “*Subfranchisor*” means a person who is granted a master franchise.

2. *Applicability.* Notwithstanding section 523H.2, this section applies to a new or existing franchise that is operated in this state and that is subject to an agreement entered into on or after July 1, 2000. For purposes of this section, the franchise is operated in this state only if the premises from which the franchise is operated are physically located in this state. For purposes of this section, 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 section 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 section do not apply to any existing or future contracts between Iowa franchisors and franchisees who operate franchises located out-of-state.

3. *Jurisdiction and venue of disputes.*

a. A provision in a franchise agreement restricting jurisdiction to a forum outside this state is void with respect to a claim otherwise enforceable under this section.

b. A civil action or proceeding arising out of a franchise may be commenced wherever jurisdiction over the parties or subject matter exists, even if the agreement limits actions or proceedings to a designated jurisdiction.

c. Venue for a civil action commenced under this chapter shall be determined in accordance with chapter 616.

4. *Waivers void.* A condition, stipulation, or provision requiring a franchisee to waive compli-

ance with or relieving a person of a duty or liability imposed by or a right provided by this section or a rule or order under this section is void. This subsection shall not affect the settlement of disputes, claims, or civil lawsuits arising or brought pursuant to this section.

5. *Transfer of franchise.*

a. 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 subsection, 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.

b. (1) A franchisee may transfer less than a controlling interest in the franchise to 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, and such transfer is approved by the franchisor. Approval of such transfer shall not be unreasonably withheld.

(2) If pursuant to such a transfer less than fifty percent of the entire 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.

(3) Participation by an employee in an employee stock ownership plan or employee incentive plan established pursuant to this subsection does not confer upon such employee any right to access trade secrets protected under the franchise agreement, which access the employee would not otherwise have if the employee did not participate in such plan.

c. A franchisor may require as a condition of a transfer any of the following:

(1) That the transferee successfully complete a training program.

(2) That a transfer fee be paid to reimburse the franchisor for the franchisor's actual expenses directly attributable to the transfer.

(3) That the franchisee pay or make provision acceptable to the franchisor to pay any amount due the franchisor or the franchisor's affiliate.

(4) That the financial terms of the transfer comply at the time of the transfer with the franchisor's current financial requirements for franchisees.

d. A franchisee shall give the franchisor no less than sixty days' written notice of a transfer which is subject to this subsection, 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.

e. 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.

f. A franchisor shall not discriminate against a proposed transferee of a franchise on the basis of race, color, national origin, religion, sex, or disability.

g. A transfer of less than a controlling interest in the franchise to the franchisee's spouse or child or children shall be permitted if following the transfer more than fifty percent of the interest in the entire franchise is held by those who meet the franchisor's reasonable current qualifications. If following such a transfer fifty percent or less of the interest in 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.

h. A franchisor shall not deny the surviving spouse or a child or children of a deceased or permanently disabled franchisee the opportunity to participate in the ownership of a franchise under a valid franchise agreement for a reasonable period, which need not exceed one year, after the death or disability of the franchisee. During such reasonable period, the surviving spouse or the child or children of the franchisee shall either meet all of the qualifications which the franchisee was subject to at the time of the death or disability of the franchisee, or sell, transfer, or assign the franchise to a person who meets the franchisor's current qualifications for a new franchisee. The rights granted pursuant to this subsection are subject to the surviving spouse or the child or children of the franchisee maintaining all standards and obligations of the franchise.

i. Incorporation of a proprietorship franchise shall be permitted upon sixty days' prior written notice to the franchisor. Such incorporation does not prohibit a franchisor from requiring a personal guaranty by the franchisee of obligations related to the franchise, and the owners of the corporation must meet the franchisor's reasonable current qualifications for franchisees.

j. A transfer within an existing ownership group of a franchise shall be permitted provided that the transferee meets the franchisor's reasonable current qualifications for franchisees, and written notice is submitted to the franchisor sixty days prior to such a transfer. 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.

6. *Encroachment.*

a. 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 is in unreasonable proximity to the existing franchisee's outlet or location and 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 paragraph "d", unless any of the following apply:

(1) 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 and such existing franchisee meets the reasonable current qualifications of the franchisor including any financial requirements, 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.

(2) 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 six percent during the first twelve months of operation of the new outlet or location.

(3) 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, not including any financial requirements.

(4) The existing franchisee has been granted reasonable territorial rights and the new outlet or location does not violate those territorial rights.

b. (1) The franchisor, with respect to claims made under paragraph "a", shall establish both of the following:

(a) 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.

(b) A reasonable formal procedure for mediating a dispute resulting in an award of 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 a neutral third-party mediator. The procedure shall be deemed reasonable if approved by a majority of the franchisor's franchisees in the United States.

(2) A dispute submitted to a formal procedure under subparagraph (1) does not diminish the rights of a franchisor or franchisee to bring a cause of action for a violation of this subsection if no settlement results from such procedure.

c. 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.

d. (1) In establishing damages under a cause of action brought pursuant to this subsection, the franchisee has the burden of proving the amount of lost profits attributable to the compensable sales. In any action brought under this subsection, the damages payable shall be limited to no more than three years of the proven lost profits. For purposes of this paragraph, "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:

(a) Six percent of the annual gross sales for that twelve-month period immediately preceding the opening of the new outlet or location.

(b) 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.

(2) Compensable sales shall exclude any amount attributable to factors other than the opening and operation of the new outlet or location.

e. Any cause of action brought under this subsection must be filed within eighteen months of the opening of the new outlet or location or within thirty days after the completion of the procedure under paragraph "b", subparagraph (1), whichever is later.

7. *Termination.*

a. Except as otherwise provided by this section, a franchisor shall not terminate a franchise prior to the expiration of its term except for good cause. For purposes of this subsection, "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. The burden of proof of showing that the action of the franchisor is arbitrary or capricious shall rest with the franchisee.

b. 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.

c. Notwithstanding paragraph “b”, a franchisor may terminate a franchise upon written notice and without an opportunity to cure if any of the following apply:

(1) The franchisee or the business to which the franchise relates is declared bankrupt or judicially determined to be insolvent.

(2) 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 subparagraph does not include the granting of a security interest in the normal course of business.

(3) 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.

(4) The franchisor and franchisee agree in writing to terminate the franchise.

(5) 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.

(6) The franchisee repeatedly fails to comply with one or more material provisions of the franchise agreement, when the enforcement of such material provisions is not arbitrary or capricious, whether or not the franchisee complies after receiving notice of the failure to comply.

(7) The franchised business or business premises of the franchisee are lawfully seized, taken over, or foreclosed by a government authority or official.

(8) 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.

(9) The franchisee operates the franchised business in a manner that imminently endangers the public health and safety.

8. *Nonrenewal of a franchise.*

a. A franchisor shall not refuse to renew a franchise unless both of the following apply:

(1) 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.

(2) Any of the following circumstances exist:

(a) Good cause exists, provided that the refusal of the franchisor to renew is not arbitrary or capricious. For purposes of this subsection, “good cause” means cause based on a legitimate business reason.

(b) The franchisor and franchisee agree not to renew the franchise.

(c) 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.

b. 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.

9. *Sources of goods or services.* A franchisor shall not require that a franchisee purchase goods, supplies, inventories, or services exclusively from the franchisor or from a source or sources of supply specifically designated by the franchisor where such goods, supplies, inventories, or services of comparable quality are available from sources other than those designated by the franchisor.

However, the publication by the franchisor of a list of approved suppliers of goods, supplies, inventories, or services, or the requirement that such goods, supplies, inventories, or services comply with specifications and standards prescribed by the franchisor, does not constitute designation of a source. Additionally, the reasonable right of a franchisor to disapprove a supplier does not constitute a designation of source. This subsection does not apply to the principal goods, supplies, inventories, or services manufactured by the franchisor, or such goods, supplies, inventories, or services entitled to protection as a trade secret.

10. *Franchisee’s right to associate.* A franchisor shall not restrict a franchisee from associating with other franchisees or from participating in a trade association, and shall not retaliate against a franchisee for engaging in these activities.

11. *Duty of good faith.* A franchise imposes on the parties a duty of good faith in performance and enforcement of the franchise agreement. “Good faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.

The duty of good faith is imposed in situations including, but not limited to, where the franchisor opens a new outlet or location that has an adverse impact on an existing franchisee. A determination

of whether the duty of good faith with respect to a new outlet or location has been met shall be made pursuant to the provisions, standards, and procedures in subsection 6.

12. *Exclusion.* For purposes of this section, “franchise” does not include a contract under which a franchise relationship is established with respect to retreaded tires and related equipment used for commercial vehicles.

13. *Private civil action.* A person who violates a provision of this section or order issued under this section is liable for damages caused by the violation, including, but not limited to, costs and reasonable attorneys’ and experts’ fees, and subject to other appropriate relief including injunctive and other equitable relief.

14. *Choice of law.* A condition, stipulation, or

provision requiring the application of the law of another state in lieu of this section is void.

15. *Construction with other law.* This section does not limit any liability that may exist under another statute or at common law.

16. *Construction.* This section shall be liberally construed to effectuate its purposes.

17. *Severability.* If any provision or clause of this section or any application of this section to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the section which can be given effect without the invalid provision or application, and to this end the provisions of this section are declared to be severable.

2001 Acts, ch 118, §55

Subsection 1, paragraph c, subparagraph (3) amended

CHAPTER 539

ASSIGNMENT OF ACCOUNTS AND NONNEGOTIABLE INSTRUMENTS

539.1 Assignment of nonnegotiable instruments.

Bonds, due bills, and all instruments by which the maker promises to pay another, without words of negotiability, a sum of money, or by which the maker promises to pay a sum of money in property or labor, or to pay or deliver any property or labor, or acknowledges any money, labor, or property to be due, are assignable by endorsement on the instrument, or by other writing. The assignee, including a person who takes assignment for collection in the regular course of business, has a right of action on them in the assignee’s own name, subject to any defense or counterclaim which the maker or debtor had against an assignor of the instrument before notice of the assignment. In case of conflict between this section and section 554.5112, 554.5113, 554.5114, 554.9404, or 554.9405, section 554.5112, 554.5113, 554.5114, 554.9404, or 554.9405 controls.

2000 Acts, ch 1149, §172, 187

2000 amendments to this section are effective July 1, 2001; 2000 Acts, ch 1149, §187

Section amended

539.2 Assignment prohibited by instrument.

When by the terms of an instrument its assignment is prohibited, an assignment thereof shall

nevertheless be valid, but the maker may make use of any defense or counterclaim against the assignee which the maker may have against any assignor thereof before notice of such assignment is given to the maker in writing. In case of conflict between this section and section 554.5112, 554.5113, 554.5114, 554.9404, or 554.9405, section 554.5112, 554.5113, 554.5114, 554.9404, or 554.9405 controls.

2000 Acts, ch 1149, §173, 187

2000 amendments to this section are effective July 1, 2001; 2000 Acts, ch 1149, §187

Section amended

539.3 Assignment of open account.

An open account of sums of money due on contract may be assigned. The assignee, including a person who takes assignment for collection in the regular course of business, has a right of action on the account in the assignee’s own name, subject to the defenses and counterclaims allowed against the instruments mentioned in section 539.2, before notice of the assignment is given to the debtor in writing by the assignee. In case of conflict, uniform commercial code, section 554.9404 or 554.9405, controls.

2000 Acts, ch 1149, §174, 187

2000 amendments to this section are effective July 1, 2001; 2000 Acts, ch 1149, §187

Section amended

CHAPTER 542B

PROFESSIONAL ENGINEERS AND LAND SURVEYORS

542B.12 Disposition of fees.

The staff shall collect and account for all fees provided for by this chapter and pay the fees to the

treasurer of state who shall deposit the fees in the general fund of the state.

Authority to refund fees; 2000 Acts, ch 1231, §5; 2001 Acts, ch 187, §5
Section not amended; footnote revised

CHAPTER 542C

PUBLIC ACCOUNTANTS

Chapter to be repealed effective July 1, 2002;
2001 Acts, ch 55, §36, 38
For provisions applicable as of July 1, 2002,
see 2001 Acts, ch 55, §1 – 19, 38
Recognition of licenses, certificates, and permits issued
before July 1, 2002, and validity of prior actions or
proceedings; 2001 Acts, ch 55, §36 – 38

542C.15 Staff to collect fees — deposit.

Staff may be employed to collect and account for all fees and pay them to the treasurer of state for deposit as provided by law. The board shall set the fees for examination as a certified public accountant, and for examination as an accounting practitioner, based upon the annual cost of administering the examinations. The fees for registration and renewal of a certificate and permit as a certified public accountant, registration of a foreign public accountant, and licensure and renewal as

an accounting practitioner, shall be based upon the administrative costs of sustaining the board which shall include, but are not limited to, the costs for:

1. Per diem, expenses, and travel for board members.
2. Office supplies and equipment.
3. Staff assistance.

Authority to refund fees; 2000 Acts, ch 1231, §5; 2001 Acts, ch 187, §5
Section not amended; footnote revised

CHAPTER 543B

REAL ESTATE BROKERS AND SALESPERSONS

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. The exclusion in this subsection does not apply to a person who, in the regular course of a business operated in the nature of a property management or brokerage business, makes repeated and successive transactions of a like character for compensation.
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, the time and place for the auction, and the name and address of the real estate broker or attorney who is providing brokerage services for the transaction and who is also responsible for closing the sale of the property; 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.

11. A nonlicensed employee of a licensee who provides information to another licensee concerning the sale, exchange, purchase, rental, lease, or advertising of real estate which has been provided to the employee by the employer licensee either verbally or in writing.

2001 Acts, ch 83, §1
Subsection 2 amended

543B.14 Fees and expenses — funds.

All fees and charges collected by the real estate commission under this chapter shall be paid into the general fund of the state, except that the

equivalent of the greater of ten dollars or forty percent per year of the fees for each real estate salesperson's license, plus the equivalent of the greater of ten dollars or twenty-five percent per year of the fees for each broker's license shall be paid into the Iowa real estate education fund created in section 543B.54. All expenses incurred by the commission under this chapter, including compensation of staff assigned to the commission, shall be paid from funds appropriated for those purposes, except for expenses incurred and compensation paid for the real estate education director, which shall be paid out of the real estate education fund.

Authority to refund fees; 2000 Acts, ch 1231, §5; 2001 Acts, ch 187, §5
Section not amended; footnote revised

CHAPTER 543D

REAL ESTATE APPRAISALS AND APPRAISERS

543D.2 Definitions.

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

1. "Appraisal" or "real estate appraisal" means an analysis, opinion, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of, identified real estate. An appraisal may be classified by subject matter into either a valuation or an analysis. A "valuation" is an estimate of the value of real estate or real property. An "analysis" is a study of real estate or real property other than estimating value.

2. "Appraisal assignment" means an engagement for which an appraiser is employed or retained to act, or would be perceived by third parties or the public as acting as a disinterested third party in rendering an appraisal, valuation, or analysis.

3. "Appraisal foundation" means the appraisal foundation incorporated as an Illinois not-for-profit corporation on November 30, 1987.

4. "Appraisal report" means any communication of an appraisal.

5. "Associate real estate appraiser" means a person who may not yet fully meet the requirements for certification but who is providing significant input into the appraisal development under the direction of a certified appraiser.

6. "Board" means the real estate appraiser examining board established pursuant to this chapter.

7. "Certified appraisal or certified appraisal report" means an appraisal or appraisal report given or signed and certified as an appraisal or appraisal report by an Iowa certified real estate appraiser.

8. A "certified real estate appraiser" means a person who develops and communicates real estate appraisals and who holds a current, valid certificate for appraisals of types of real estate which may include residential, commercial, or rural real

estate, as may be established under this chapter.

9. "Review appraiser" means a person who is responsible for the administrative approval of the appraised value of real property or assures that appraisal reports conform to the requirements of law and policy, or that the value of real property estimated by appraisers represents adequate security, fair market value, or other defined value.

10. "Specialized services" means a hypothetical or other special valuation, or an analysis or an appraisal which does not fall within the definition of an appraisal assignment.

2001 Acts, ch 49, §1
Subsection 4 amended

543D.6 Fees.

1. The board shall establish and collect fees for certification, examination, reexamination, renewal of certification, and delinquency at an amount necessary to pay the administrative costs of sustaining the board and implementing this chapter. The fees shall include, but are not limited to, amounts to cover the costs for the following items:

a. Per diem, expenses, and travel expenses for board members, peer review committee persons, or disciplinary panel members.

b. Salary, per diem, and expenses of staff.

c. Office facilities, supplies, and equipment.

2. Fees collected by the board shall be transmitted to the treasurer of state who shall deposit the fees in the general fund of the state.

Authority to refund fees; 2000 Acts, ch 1231, §5; 2001 Acts, ch 187, §5
Section not amended; footnote revised

543D.14 Certificate.

A certificate issued under this chapter shall bear the signature or facsimile signature of the member or members of the board as designated by the board and a certificate number assigned by the board.

2001 Acts, ch 49, §2
Section amended

CHAPTER 544A

REGISTERED ARCHITECTS

544A.11 Fees.

The board shall set the fees for examination, for a certificate of registration as an architect, for renewal of a certificate, for reinstatement of a certificate, and for other activities of the board pertaining to its duties. The fee for examination shall be based on the annual cost of administering the examinations. The fee for a certificate of registration and for renewal of a certificate shall be based upon the administrative costs of sustaining the board which shall include, but are not limited to, the costs for all of the following:

1. Per diem, expenses and travel for board members.
2. Office facilities, supplies and equipment.
3. Staff assistance.

All fees shall be paid to the treasurer of state and deposited in the general fund of the state.

Authority to refund fees; 2000 Acts, ch 1231, §5; 2001 Acts, ch 187, §5
Section not amended; footnote revised

544A.21 Practice by business entities.

Corporations may be formed under the Iowa business corporation Act, chapter 490, for the purpose of engaging in the practice of architecture. A corporation may be either a business corporation or a professional corporation. A corporation, partnership, sole proprietorship, or other business entity is not eligible for registration under this chapter. Only an individual natural person is eligible for registration. A domestic or foreign corporation, partnership, sole proprietorship, or other business entity may engage in the practice of architecture in this state, but only if all of the following requirements are met:

1. The entire practice of architecture by the corporation, partnership, sole proprietorship, or other business entity in this state and in connection with buildings, structures, and projects located in this state shall be performed by or under the direct supervision and responsible charge of one or more architects.

2. No less than two-thirds of the directors, if a corporation, or no less than two-thirds of the general partners, if a partnership, or the sole propri-

etor shall be qualified by registration to perform either professional architectural services or professional engineering services, by a registration authority recognized by the board, where the qualifications for registration are, in the opinion of the board, substantially equivalent to those prescribed by the laws of this state.

3. No less than one-third of the directors, if a corporation, or no less than one-third of the general partners, if a partnership, or the sole proprietor shall be qualified by registration to perform professional architectural services, by a registration authority recognized by the board, where the qualifications for registration are, in the opinion of the board, equivalent to those prescribed by this chapter.

4. A person engaging in the practice of architecture in the state of Iowa and in responsible charge on behalf of a business entity engaged in the practice of architecture must be registered to practice architecture in this state, and shall be a director, if a corporation, a general partner, if a partnership, or a sole proprietor of the business entity.

5. Before engaging in the practice of architecture in this state, a corporation, partnership, or sole proprietorship shall acquire an "authorization to practice architecture as a business entity" from the board. The board shall adopt rules establishing the required information concerning officers, directors, beneficial owners, limitations on the name of the business entity, and other aspects of its business organization, which must be submitted to the board upon forms prescribed by the board in order to qualify for authorization.

The practice of architecture by or through a corporation, partnership, sole proprietorship, or other business entity does not relieve a person of liability for professional errors or omissions which liability would exist if the person were practicing as an individual, including, but not limited to, liability arising out of negligent supervision of the work of subordinates.

2001 Acts, ch 24, §62
Unnumbered paragraph 1 amended

CHAPTER 544B

LANDSCAPE ARCHITECTS

544B.14 Fees.

The board shall set the fees for a certificate of registration as a registered landscape architect,

and for renewal of a certificate. The fee for a certificate of registration and for renewal of a certificate shall be based upon the administrative costs of

sustaining the board which shall include, but shall not be limited to, the costs for:

1. Per diem, expenses, and travel for board members.
2. Office facilities, supplies and equipment.
3. Staff assistance.

All fees shall be collected by the secretary, paid to the treasurer of state and deposited in the general fund of the state.

Authority to refund fees; 2000 Acts, ch 1231, §5; 2001 Acts, ch 187, §5
Section not amended; footnote revised

CHAPTER 546

DEPARTMENT OF COMMERCE

546.10 Professional licensing and regulation division — superintendent of savings and loan associations.

1. The professional licensing and regulation division shall administer and coordinate the licensing and regulation of several professions by bringing together the following licensing boards:

- a. The engineering and land surveying examining board created pursuant to chapter 542B.
- b. The accountancy examining board created pursuant to chapter 542C.
- c. The real estate commission created pursuant to chapter 543B.
- d. The architectural examining board created pursuant to chapter 544A.
- e. The landscape architectural examining board created pursuant to chapter 544B.

2. The division is headed by the administrator of professional licensing and regulation who shall be appointed by the governor subject to confirmation by the senate and shall serve a four-year term that begins and ends as provided in section 69.19. A vacancy shall be filled for the unexpired portion of the term in the same manner as a full-term appointment is made. The administrator shall appoint and supervise staff and shall coordinate activities for the licensing boards within the division. The administrator shall act as a staff person to one or more of the licensing boards.

3. The licensing and regulation examining boards included in the division pursuant to subsection 1 retain the powers granted them pursuant to the chapters in which they are created, except for budgetary and personnel matters which shall be handled by the administrator. Each licensing board shall adopt rules pursuant to chapter 17A. Decisions by a licensing board are final agency actions for purposes of chapter 17A.

4. The professional licensing and regulation division of the department of commerce may expend additional funds, including funds for additional personnel, if those additional expenditures

are directly the cause of actual examination expenses exceeding funds budgeted for examinations. Before the division expends or encumbers an amount in excess of the funds budgeted for examinations, 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 examination expenses exceed the funds budgeted by the general assembly to the division and the division does not have other funds from which the expenses can be paid. Upon approval of the director of the department of management, the division may expend and encumber funds for excess examination expenses. The amounts necessary to fund the examination expenses shall be collected as fees from additional examination applicants and shall be treated as repayment receipts as defined in section 8.2, subsection 8.

5. Fees collected under chapters 542B, 542C, 543B, 543D, 544A, and 544B shall be paid to the treasurer of state and credited to the general fund of the state. All expenses required in the discharge of the duties and responsibilities imposed upon the professional licensing division of the department of commerce, the administrator, and the licensing boards by the laws of this state shall be paid from moneys appropriated by the general assembly for those purposes. All fees deposited into the general fund of the state, as provided in this subsection, shall be subject to the requirements of section 8.60.

6. The administrator of professional licensing and regulation is the superintendent of savings and loan associations. The administrator may appoint an individual to act as the superintendent who shall serve as the superintendent at the pleasure of the administrator.

For future amendments to this section effective July 1, 2002, see 2001 Acts, ch 55, §33, 34, 38

Section not amended; footnote added

CHAPTER 554

UNIFORM COMMERCIAL CODE

Court action or parties agreement required for disposition
of property under obligation secured by mortgage, trust deed,
or other security during military service;
2001 Acts, 2nd Ex, ch 1, §29, 32, 35, 36

554.1105 Territorial application of the chapter — parties' power to choose applicable law.

1. Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement this chapter applies to transactions bearing an appropriate relation to this state.

2. Where one of the following provisions of this chapter specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. Section 554.2402.

Applicability of the Article on Bank Deposits and Collections. Section 554.4102.

Letters of Credit. Section 554.5116.

Applicability of the Article on Investment Securities. Section 554.8110.

Law governing perfection, the effect of perfection or nonperfection, and the priority of security interests and agricultural liens. Sections 554.9301, 554.9302, 554.9303, 554.9304, 554.9305, 554.9306, and 554.9307.

Governing law in the Article on Funds Transfers. Section 554.12507.

Applicability of the Article on Leases. Sections 554.13105 and 554.13106.

2000 Acts, ch 1149, §137, 187
2000 amendment to subsection 2 is effective July 1, 2001; 2000 Acts, ch 1149, §187

Subsection 2 amended

554.1201 General definitions.

Subject to additional definitions contained in the subsequent Articles of this chapter which are applicable to specific Articles or Parts thereof, and unless the context otherwise requires, in this chapter:

1. "*Action*" in the sense of a judicial proceeding includes recoupment, counterclaim, setoff, suit in equity and any other proceedings in which rights are determined.

2. "*Aggrieved party*" means a party entitled to resort to a remedy.

3. "*Agreement*" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this chapter (sections

554.1205 and 554.2208). Whether an agreement has legal consequences is determined by the provisions of this chapter, if applicable; otherwise by the law of contracts (section 554.1103). (Compare "Contract".)

4. "*Bank*" means any person engaged in the business of banking.

5. "*Bearer*" means the person in possession of an instrument, document of title, or certificated security payable to bearer or endorsed in blank.

6. "*Bill of lading*" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. "*Airbill*" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

7. "*Branch*" includes a separately incorporated foreign branch of a bank.

8. "*Burden of establishing*" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.

9. "*Buyer in ordinary course of business*" means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a pre-existing contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under Article 2 may be a buyer in ordinary course of business. A person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt is not a buyer in ordinary course of business.

10. "*Conspicuous*": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: "Non-negotiable Bill of Lading") is conspicuous. Lan-

guage in the body of a form is “conspicuous” if it is in larger or other contrasting type or color. But in a telegram any stated term is “conspicuous”. Whether a term or clause is “conspicuous” or not is for decision by the court.

11. “*Contract*” means the total legal obligation which results from the parties’ agreement as affected by this chapter and any other applicable rules of law. (Compare “*Agreement*”.)

12. “*Creditor*” includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor’s or assignor’s estate.

13. “*Defendant*” includes a person in the position of defendant in a cross-action or counterclaim.

14. “*Delivery*” with respect to instruments, documents of title, chattel paper, or certificated securities means voluntary transfer of possession.

15. “*Document of title*” includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee’s possession which are either identified or are fungible portions of an identified mass.

16. “*Fault*” means wrongful act, omission or breach.

17. “*Fungible*” with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this chapter to the extent that under a particular agreement or document unlike units are treated as equivalents.

18. “*Genuine*” means free of forgery or counterfeiting.

19. “*Good faith*” means honesty in fact in the conduct or transaction concerned.

20. “*Holder*”, with respect to a negotiable instrument, means the person in possession if the instrument is payable to bearer or, in the case of an instrument payable to an identified person, if the identified person is in possession. “*Holder*” with respect to a document of title means the person in possession if the goods are deliverable to bearer or to the order of the person in possession.

21. To “*honor*” is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

22. “*Insolvency proceedings*” includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

23. A person is “*insolvent*” who either has

ceased to pay that person’s debts in the ordinary course of business or cannot pay that person’s debts as they become due or is insolvent within the meaning of the federal bankruptcy law.

24. “*Money*” means a medium of exchange authorized or adopted by a domestic or foreign government and includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more nations.

25. A person has “*notice*” of a fact when

- a. the person has actual knowledge of it; or
- b. the person has received a notice or notification of it; or

c. from all the facts and circumstances known to the person at the time in question the person has reason to know that it exists. A person “*knows*” or has “*knowledge*” of a fact when that person has actual knowledge of it. “*Discover*” or “*learn*” or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this chapter.

26. A person “*notifies*” or “*gives*” a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person “*receives*” a notice or notification when

- a. it comes to that person’s attention; or
- b. it is duly delivered at the place of business through which the contract was made or at any other place held out by that person as the place for receipt of such communications.

27. Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to that individual’s attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of that individual’s regular duties or unless the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

28. “*Organization*” includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

29. “*Party*”, as distinct from “*third party*”, means a person who has engaged in a transaction or made an agreement within this chapter.

30. “*Person*” includes an individual or an orga-

nization (See section 554.1102).

31. “*Presumption*” or “*presumed*” means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

32. “*Purchase*” means any voluntary transaction creating an interest in property, including taking by sale, discount, negotiation, mortgage, pledge, voluntary lien, security interest, issue, re-issue, or gift.

33. “*Purchaser*” means a person who takes by purchase.

34. “*Remedy*” means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

35. “*Representative*” includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

36. “*Rights*” includes remedies.

37. *a.* “*Security interest*” means an interest in personal property or fixtures which secures payment or performance of an obligation. The term also includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to Article 9. The special property interest of a buyer of goods on identification of those goods to a contract for sale under section 554.2401 is not a “*security interest*”, but a buyer may also acquire a “*security interest*” by complying with Article 9. Except as otherwise provided in section 554.2505, the right of a seller or lessor of goods under Article 2 or 13 to retain or acquire possession of the goods is not a “*security interest*”, but a seller or lessor may also acquire a “*security interest*” by complying with Article 9. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (section 554.2401) is limited in effect to a reservation of a “*security interest*”.

b. Whether a transaction creates a lease or security interest is determined by the facts of each case; however, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee, and

(1) the original term of the lease is equal to or greater than the remaining economic life of the goods,

(2) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods,

(3) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement, or

(4) the lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

c. A transaction does not create a security interest merely because it provides that

(1) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into,

(2) the lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording, or registration fees, or service or maintenance costs with respect to the goods,

(3) the lessee has an option to renew the lease or to become the owner of the goods,

(4) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed, or

(5) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

d. For purposes of this subsection:

(1) Additional consideration is not nominal if (i) when the option to renew the lease is granted to the lessee the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed, or (ii) when the option to become the owner of the goods is granted to the lessee the price is stated to be the fair market value of the goods determined at the time the option is to be performed. Additional consideration is nominal if it is less than the lessee’s reasonably predictable cost of performing under the lease agreement if the option is not exercised;

(2) “*Reasonably predictable*” and “*remaining economic life of the goods*” are to be determined with reference to the facts and circumstances at the time the transaction is entered into; and

(3) “*Present value*” means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

38. “*Send*” in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

39. “Signed” includes any symbol executed or adopted by a party with present intention to authenticate a writing.

40. “Surety” includes guarantor.

41. “Telegram” includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

42. “Term” means that portion of an agreement which relates to a particular matter.

43. “Unauthorized” signature means one made without actual, implied, or apparent authority and includes a forgery.

44. “Value”. Except as otherwise provided with respect to negotiable instruments and bank collections (sections 554.3303, 554.4210, and 554.4211) a person gives “value” for rights if the person acquires them

a. in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection; or

b. as security for or in total or partial satisfaction of a pre-existing claim; or

c. by accepting delivery pursuant to a pre-existing contract for purchase; or

d. generally, in return for any consideration sufficient to support a simple contract.

45. “Warehouse receipt” means a receipt issued by a person engaged in the business of storing goods for hire.

46. “Written” or “writing” includes printing, typewriting or any other intentional reduction to tangible form.

2000 Acts, ch 1149, §138, 139, 187
2000 amendments to subsections 9, 32, and 37 are effective July 1, 2001;
2000 Acts, ch 1149, §187
Subsections 9 and 32 amended
Subsection 37, paragraph a amended

554.2103 Definitions and index of definitions.

1. In this Article unless the context otherwise requires

a. “Buyer” means a person who buys or contracts to buy goods.

b. “Good faith” in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.

c. “Receipt” of goods means taking physical possession of them.

d. “Seller” means a person who sells or contracts to sell goods.

2. Other definitions applying to this Article or to specified Parts thereof, and the sections in which they appear are:

“Acceptance”	Section 554.2606
“Banker’s credit”	Section 554.2325
“Between merchants”	Section 554.2104
“Cancellation”	Section 554.2106(4)
“Commercial unit”	Section 554.2105
“Confirmed credit”	Section 554.2325

“Conforming to contract” Section 554.2106

“Contract for sale” Section 554.2106

“Cover” Section 554.2712

“Entrusting” Section 554.2403

“Financing agency” Section 554.2104

“Future goods” Section 554.2105

“Goods” Section 554.2105

“Identification” Section 554.2501

“Installment contract” Section 554.2612

“Letter of credit” Section 554.2325

“Lot” Section 554.2105

“Merchant” Section 554.2104

“Overseas” Section 554.2323

“Person in position of seller” Section 554.2707

“Present sale” Section 554.2106

“Sale” Section 554.2106

“Sale on approval” Section 554.2326

“Sale or return” Section 554.2326

“Termination” Section 554.2106

3. The following definitions in other Articles apply to this Article:

“Check” Section 554.3104

“Consignee” Section 554.7102

“Consignor” Section 554.7102

“Consumer goods” Section 554.9102

“Dishonor” Section 554.3502

“Draft” Section 554.3104

4. In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

2000 Acts, ch 1149, §140, 187
2000 amendment to subsection 3 is effective July 1, 2001; 2000 Acts, ch 1149, §187
Subsection 3 amended

554.2210 Delegation of performance — assignment of rights.

1. A party may perform that party’s duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having the original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.

2. Except as otherwise provided in section 554.9406, unless otherwise agreed all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party, or increase materially the burden of risk imposed on the other party by the contract, or impair materially the other party’s chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor’s due performance of the assignor’s entire obligation can be assigned despite agreement otherwise.

3. The creation, attachment, perfection, or enforcement of a security interest in the seller’s interest under a contract is not a transfer that materially changes the duty of or increases materially the burden or risk imposed on the buyer or impairs materially the buyer’s chance of obtaining return

performance within the purview of subsection 2 unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the seller. Even in that event, the creation, attachment, perfection, and enforcement of the security interest remain effective, but (i) the seller is liable to the buyer for damages caused by the delegation to the extent that the damages could not reasonably be prevented by the buyer, and (ii) a court having jurisdiction may grant other appropriate relief, including cancellation of the contract for sale or an injunction against enforcement of the security interest or consummation of the enforcement.

4. Unless the circumstances indicate the contrary a prohibition of assignment of “the contract” is to be construed as barring only the delegation to the assignee of the assignor’s performance.

5. An assignment of “the contract” or of “all my rights under the contract” or an assignment in similar general terms is an assignment of rights and unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor and its acceptance by the assignee constitutes a promise by the assignee to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract.

6. The other party may treat any assignment which delegates performance as creating reasonable grounds for insecurity and may without prejudice to that party’s rights against the assignor demand assurances from the assignee (section 554.2609).

2000 Acts, ch 1149, §141, 142, 187
2000 amendments take effect July 1, 2001; 2000 Acts, ch 1149, §187
Subsection 2 amended
NEW subsection 3 and former subsections 3 – 5 renumbered as 4 – 6

554.2326 Sale on approval and sale or return — rights of creditors.

1. Unless otherwise agreed, if delivered goods may be returned by the buyer even though they conform to the contract, the transaction is

- a. a “sale on approval” if the goods are delivered primarily for use, and
- b. a “sale or return” if the goods are delivered primarily for resale.

2. Goods held on approval are not subject to the claims of the buyer’s creditors until acceptance; goods held on sale or return are subject to such claims while in the buyer’s possession.

3. Any “or return” term of a contract for sale is to be treated as a separate contract for sale within the statute of frauds section of this Article (section 554.2201) and as contradicting the sale aspect of the contract within the provisions of this Article on parol or extrinsic evidence (section 554.2202).

2000 Acts, ch 1149, §143, 187
2000 amendments are effective July 1, 2001; 2000 Acts, ch 1149, §187
Section amended

554.2502 Buyer’s right to goods on seller’s repudiation, failure to deliver, or insolvency.

1. Subject to subsections 2 and 3 and even though the goods have not been shipped a buyer who has paid a part or all of the price of goods in which the buyer has a special property under the provisions of the immediately preceding section may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if:

- a. in the case of goods bought for personal, family, or household purposes, the seller repudiates or fails to deliver as required by the contract; or
- b. in all cases the seller becomes insolvent within ten days after receipt of the first installment on their price.

2. The buyer’s right to recover the goods under subsection 1, paragraph “a”, vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver.

3. If the identification creating the buyer’s special property has been made by the buyer, the buyer acquires the right to recover the goods only if they conform to the contract for sale.

2000 Acts, ch 1149, §144, 187
2000 amendments are effective July 1, 2001; 2000 Acts, ch 1149, §187
Section amended

554.2716 Buyer’s right to specific performance or replevin.

1. Specific performance may be decreed where the goods are unique or in other proper circumstances.

2. The decree for specific performance may include such terms and conditions as to payment of the price, damages, or other relief as the court may deem just.

3. The buyer has a right of replevin for goods identified to the contract if after reasonable effort the buyer is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered. In the case of goods bought for personal, family, or household purposes, the buyer’s right of replevin vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver.

2000 Acts, ch 1149, §145, 187
2000 amendment to subsection 3 takes effect July 1, 2001; 2000 Acts, ch 1149, §187
Subsection 3 amended

554.4210 Security interest of collecting bank in items, accompanying documents and proceeds.

1. A collecting bank has a security interest in an item and any accompanying documents or the proceeds of either:

- a. in case of an item deposited in an account, to the extent to which credit given for the item has been withdrawn or applied;
- b. in case of an item for which it has given cred-

it available for withdrawal as of right, to the extent of the credit given, whether or not the credit is drawn upon or there is a right of charge-back; or

c. if it makes an advance on or against the item.

2. If credit given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part, the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

3. Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents, and proceeds. So long as the bank does not receive final settlement for the item or give up possession of the item or accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to Article 9, but:

a. no security agreement is necessary to make the security interest enforceable (section 554.9203, subsection 2, paragraph “c”, subparagraph (1));

b. no filing is required to perfect the security interest; and

c. the security interest has priority over conflicting perfected security interests in the item, accompanying documents, or proceeds.

2000 Acts, ch 1149, §146, 187

2000 amendment to subsection 3, paragraph a, takes effect July 1, 2001;

2000 Acts, ch 1149, §187

Subsection 3, paragraph a amended

554.5118 Security interest of issuer or nominated person.

1. An issuer or nominated person has a security interest in a document presented under a letter of credit to the extent that the issuer or nominated person honors or gives value for the presentation.

2. So long as and to the extent that an issuer or nominated person has not been reimbursed or has not otherwise recovered the value given with respect to a security interest in a document under subsection 1, the security interest continues and is subject to Article 9, but:

a. a security agreement is not necessary to make the security interest enforceable under section 554.9203, subsection 2, paragraph “c”;

b. if the document is presented in a medium other than a written or other tangible medium, the security interest is perfected; and

c. if the document is presented in a written or other tangible medium and is not a certificated security, chattel paper, a document of title, an instrument, or a letter of credit, the security interest is perfected and has priority over a conflicting security interest in the document so long as the debtor does not have possession of the document.

2000 Acts, ch 1149, §147, 187

Section is effective July 1, 2001; 2000 Acts, ch 1149, §187

NEW section

554.7503 Document of title to goods defeated in certain cases.

1. A document of title confers no right in goods against a person who before issuance of the document had a legal interest or a perfected security interest in them and who neither

a. delivered or entrusted them or any document of title covering them to the bailor or the bailor’s nominee with actual or apparent authority to ship, store or sell or with power to obtain delivery under this Article (section 554.7403) or with power of disposition under this chapter (sections 554.2403 and 554.9320) or other statute or rule of law; nor

b. acquiesced in the procurement by the bailor or the bailor’s nominee of any document of title.

2. Title to goods based upon an unaccepted delivery order is subject to the rights of anyone to whom a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. Such a title may be defeated under the next section to the same extent as the rights of the issuer or a transferee from the issuer.

3. Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of anyone to whom a bill issued by the freight forwarder is duly negotiated; but delivery by the carrier in accordance with Part 4 of this Article pursuant to its own bill of lading discharges the carrier’s obligation to deliver.

2000 Acts, ch 1149, §148, 187

2000 amendment to subsection 1, paragraph a, takes effect July 1, 2001;

2000 Acts, ch 1149, §187

Subsection 1, paragraph a amended

554.8103 Rules for determining whether certain obligations and interests are securities or financial assets.

1. A share or similar equity interest issued by a corporation, business trust, joint stock company, or similar entity is a security.

2. An “investment company security” is a security. “*Investment company security*” means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered, or a face-amount certificate issued by a face-amount certificate company that is so registered. Investment company security does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.

3. An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by this Article, or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

4. A writing that is a security certificate is governed by this Article and not by Article 3, even

though it also meets the requirements of that Article. However, a negotiable instrument governed by Article 3 is a financial asset if it is held in a securities account.

5. An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.

6. A commodity contract, as defined in section 554.9102, subsection 1, paragraph “o”, is not a security or a financial asset.

2000 Acts, ch 1149, §149, 187
2000 amendment to subsection 6 takes effect July 1, 2001; 2000 Acts, ch 1149, §187
Subsection 6 amended

554.8106 Control.

1. A purchaser has “control” of a certificated security in bearer form if the certificated security is delivered to the purchaser.

2. A purchaser has “control” of a certificated security in registered form if the certificated security is delivered to the purchaser, and:

- a. the certificate is indorsed to the purchaser or in blank by an effective indorsement; or
- b. the certificate is registered in the name of the purchaser, upon original issue or registration of transfer by the issuer.

3. A purchaser has “control” of an uncertificated security if:

- a. the uncertificated security is delivered to the purchaser; or
- b. the issuer has agreed that it will comply with instructions originated by the purchaser without further consent by the registered owner.

4. A purchaser has “control” of a security entitlement if:

- a. the purchaser becomes the entitlement holder;
- b. the securities intermediary has agreed that it will comply with entitlement orders originated by the purchaser without further consent by the entitlement holder; or
- c. another person has control of the security entitlement on behalf of the purchaser or, having previously acquired control of the security entitlement, acknowledges that it has control on behalf of the purchaser.

5. If an interest in a security entitlement is granted by the entitlement holder to the entitlement holder’s own securities intermediary, the securities intermediary has control.

6. A purchaser who has satisfied the requirements of subsection 3 or 4 has control, even if the registered owner in the case of subsection 3, paragraph “b”, or the entitlement holder in the case of subsection 4, retains the right to make substitutions for the uncertificated security or security entitlement, to originate instructions or entitlement orders to the issuer or securities intermediary, or otherwise to deal with the uncertificated security or security entitlement.

7. An issuer or a securities intermediary may not enter into an agreement of the kind described

in subsection 3, paragraph “b”, or subsection 4, paragraph “b”, without the consent of the registered owner or entitlement holder, but an issuer or a securities intermediary is not required to enter into such an agreement even though the registered owner or entitlement holder so directs. An issuer or securities intermediary that has entered into such an agreement is not required to confirm the existence of the agreement to another party unless requested to do so by the registered owner or entitlement holder.

2000 Acts, ch 1149, §150, 187
2000 amendments to subsections 4 and 6 are effective July 1, 2001; 2000 Acts, ch 1149, §187
Subsections 4 and 6 amended

554.8110 Applicability — choice of law.

1. The local law of the issuer’s jurisdiction, as specified in subsection 4, governs:

- a. the validity of a security;
- b. the rights and duties of the issuer with respect to registration of transfer;
- c. the effectiveness of registration of transfer by the issuer;
- d. whether the issuer owes any duties to an adverse claimant to a security; and
- e. whether an adverse claim can be asserted against a person to whom transfer of a certificated or uncertificated security is registered or a person who obtains control of an uncertificated security.

2. The local law of the securities intermediary’s jurisdiction, as specified in subsection 5, governs:

- a. acquisition of a security entitlement from the securities intermediary;
- b. the rights and duties of the securities intermediary and entitlement holder arising out of a security entitlement;
- c. whether the securities intermediary owes any duties to an adverse claimant to a security entitlement; and
- d. whether an adverse claim can be asserted against a person who acquires a security entitlement from the securities intermediary or a person who purchases a security entitlement or interest therein from an entitlement holder.

3. The local law of the jurisdiction in which a security certificate is located at the time of delivery governs whether an adverse claim can be asserted against a person to whom the security certificate is delivered.

4. “*Issuer’s jurisdiction*” means the jurisdiction under which the issuer of the security is organized or, if permitted by the law of that jurisdiction, the law of another jurisdiction specified by the issuer. An issuer organized under the law of this state may specify the law of another jurisdiction as the law governing the matters specified in subsection 1, paragraphs “b” through “e”.

5. The following rules determine a “securities intermediary’s jurisdiction” for purposes of this section:

- a. if an agreement between the securities intermediary and its entitlement holder governing

the securities account expressly provides that a particular jurisdiction is the securities intermediary's jurisdiction for purposes of this part, this Article, or this Act,* that jurisdiction is the securities intermediary's jurisdiction.

b. if paragraph "a" does not apply and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

c. if neither paragraph "a" nor paragraph "b" applies and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

d. if none of the preceding paragraphs applies, the securities intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the entitlement holder's account is located.

e. if none of the preceding paragraphs applies, the securities intermediary's jurisdiction is the jurisdiction in which the chief executive office of the securities intermediary is located.

6. A securities intermediary's jurisdiction is not determined by the physical location of certificates representing financial assets, or by the jurisdiction in which is organized the issuer of the financial asset with respect to which an entitlement holder has a security entitlement, or by the location of facilities for data processing or other record keeping concerning the account.

2000 Acts, ch 1149, §151, 187

*2000 Acts, ch 1149

2000 amendments to subsection 5 take effect July 1, 2001; 2000 Acts, ch 1149, §187

Subsection 5, paragraph a amended, NEW paragraph b, and former paragraphs b - d amended and redesignated as c - e

554.8301 Delivery.

1. Delivery of a certificated security to a purchaser occurs when:

a. the purchaser acquires possession of the security certificate;

b. another person, other than a securities intermediary, either acquires possession of the security certificate on behalf of the purchaser or, having previously acquired possession of the certificate, acknowledges that it holds for the purchaser; or

c. a securities intermediary acting on behalf of the purchaser acquires possession of the security certificate, only if the certificate is in registered form and is (i) registered in the name of the purchaser, (ii) payable to the order of the purchaser, or (iii) specially indorsed to the purchaser by an effective indorsement and has not been indorsed to the securities intermediary or in blank.

2. Delivery of an uncertificated security to a purchaser occurs when:

a. the issuer registers the purchaser as the registered owner, upon original issue or registration of transfer; or

b. another person, other than a securities intermediary, either becomes the registered owner of the uncertificated security on behalf of the purchaser or, having previously become the registered owner, acknowledges that it holds for the purchaser.

2000 Acts, ch 1149, §152, 187

2000 amendments to subsection 1, paragraph c, are effective July 1, 2001; 2000 Acts, ch 1149, §187

Subsection 1, paragraph c amended

554.8302 Rights of purchaser.

1. Except as otherwise provided in subsections 2 and 3, a purchaser of a certificated or uncertificated security acquires all rights in the security that the transferor had or had power to transfer.

2. A purchaser of a limited interest acquires rights only to the extent of the interest purchased.

3. A purchaser of a certificated security who as a previous holder had notice of an adverse claim does not improve its position by taking from a protected purchaser.

2000 Acts, ch 1149, §153, 187

2000 amendments to subsection 1 are effective July 1, 2001; 2000 Acts, ch 1149, §187

Subsection 1 amended

554.8510 Rights of purchaser of security entitlement from entitlement holder.

1. In a case not covered by the priority rules in Article 9 or the rules stated in subsection 3, an action based on an adverse claim to a financial asset or security entitlement, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who purchases a security entitlement, or an interest therein, from an entitlement holder if the purchaser gives value, does not have notice of the adverse claim, and obtains control.

2. If an adverse claim could not have been asserted against an entitlement holder under section 554.8502, the adverse claim cannot be asserted against a person who purchases a security entitlement, or an interest therein, from the entitlement holder.

3. In a case not covered by the priority rules in Article 9, a purchaser for value of a security entitlement, or an interest therein, who obtains control has priority over a purchaser of a security entitlement, or an interest therein, who does not obtain control. Except as otherwise provided in subsection 4, purchasers who have control rank according to priority in time of:

a. the purchaser's becoming the person for whom the securities account, in which the security entitlement is carried, is maintained, if the purchaser obtained control under section 554.8106, subsection 4, paragraph "a";

b. the securities intermediary's agreement to comply with the purchaser's entitlement orders with respect to security entitlements carried or to

be carried in the securities account in which the security entitlement is carried, if the purchaser obtained control under section 554.8106, subsection 4, paragraph “b”;

c. if the purchaser obtained control through another person under section 554.8106, subsection 4, paragraph “c”, the time on which priority would be based under this subsection if the other person were the secured party; or

4. A securities intermediary as purchaser has priority over a conflicting purchaser who has control unless otherwise agreed by the securities intermediary.

2000 Acts, ch 1149, §154, 187

2000 amendments are effective July 1, 2001; 2000 Acts, ch 1149, §187
Section amended

ARTICLE 9

SECURED TRANSACTIONS

PART 1

GENERAL PROVISIONS

A. SHORT TITLE, DEFINITIONS, AND GENERAL CONCEPTS

554.9101 Short title.

This Article may be cited as Uniform Commercial Code — Secured Transactions.

2000 Acts, ch 1149, §1, 185, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

NEW section

554.9102 Definitions and index of definitions.

1. *Article 9 definitions.* In this Article:

a. “*Accession*” means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

b. “*Account*”, except as used in “*account for*”, means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health care insurance receivables. The term does not include (i) rights to payment evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or let-

ters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

c. “*Account debtor*” means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

d. “*Accounting*”, except as used in “*accounting for*”, means a record:

(1) authenticated by a secured party;

(2) indicating the aggregate unpaid secured obligations as of a date not more than thirty-five days earlier or thirty-five days later than the date of the record; and

(3) identifying the components of the obligations in reasonable detail.

e. “*Agricultural lien*” means an interest, other than a security interest, in farm products:

(1) which secures payment or performance of an obligation for:

(a) goods or services furnished in connection with a debtor’s farming operation; or

(b) rent on real property leased by a debtor in connection with its farming operation;

(2) which is created by statute in favor of a person that:

(a) in the ordinary course of its business furnished goods or services to a debtor in connection with a debtor’s farming operation; or

(b) leased real property to a debtor in connection with the debtor’s farming operation; and

(3) whose effectiveness does not depend on the person’s possession of the personal property.

f. “*As-extracted collateral*” means:

(1) oil, gas, or other minerals that are subject to a security interest that:

(a) is created by a debtor having an interest in the minerals before extraction; and

(b) attaches to the minerals as extracted; or

(2) accounts arising out of the sale at the well-head or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

g. “*Authenticate*” means:

(1) to sign; or

(2) to execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record.

h. “*Bank*” means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.

i. “*Cash proceeds*” means proceeds that are money, checks, deposit accounts, or the like.

j. “*Certificate of title*” means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest’s obtaining priority over the rights of a

lien creditor with respect to the collateral.

k. “*Chattel paper*” means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this paragraph, “*monetary obligation*” means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include (i) charters or other contracts involving the use or hire of a vessel or (ii) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

l. “*Collateral*” means the property subject to a security interest or agricultural lien. The term includes:

- (1) proceeds to which a security interest attaches;
- (2) accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and
- (3) goods that are the subject of a consignment.

m. “*Commercial tort claim*” means a claim arising in tort with respect to which:

- (1) the claimant is an organization; or
- (2) the claimant is an individual and the claim:
 - (a) arose in the course of the claimant’s business or profession; and
 - (b) does not include damages arising out of personal injury to or the death of an individual.

n. “*Commodity account*” means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

o. “*Commodity contract*” means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:

- (1) traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or
- (2) traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

p. “*Commodity customer*” means a person for which a commodity intermediary carries a commodity contract on its books.

q. “*Commodity intermediary*” means a person that:

- (1) is registered as a futures commission merchant under federal commodities law; or
- (2) in the ordinary course of its business provides clearance or settlement services for a board

of trade that has been designated as a contract market pursuant to federal commodities law.

r. “*Communicate*” means:

- (1) to send a written or other tangible record;
- (2) to transmit a record by any means agreed upon by the persons sending and receiving the record; or
- (3) in the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

s. “*Consignee*” means a merchant to which goods are delivered in a consignment.

t. “*Consignment*” means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

- (1) the merchant:
 - (a) deals in goods of that kind under a name other than the name of the person making delivery;
 - (b) is not an auctioneer; and
 - (c) is not generally known by its creditors to be substantially engaged in selling the goods of others;
- (2) with respect to each delivery, the aggregate value of the goods is one thousand dollars or more at the time of delivery;
- (3) the goods are not consumer goods immediately before delivery; and
- (4) the transaction does not create a security interest that secures an obligation.

u. “*Consignor*” means a person that delivers goods to a consignee in a consignment.

v. “*Consumer debtor*” means a debtor in a consumer transaction.

w. “*Consumer goods*” means goods that are used or bought for use primarily for personal, family, or household purposes.

x. “*Consumer-goods transaction*” means a consumer transaction in which:

- (1) an individual incurs an obligation primarily for personal, family, or household purposes; and
- (2) a security interest in consumer goods secures the obligation.

y. “*Consumer obligor*” means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.

z. “*Consumer transaction*” means a transaction in which (i) an individual incurs an obligation primarily for personal, family, or household purposes, (ii) a security interest secures the obligation, and (iii) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions.

aa. “*Continuation statement*” means an amendment of a financing statement which:

- (1) identifies, by its file number, the initial financing statement to which it relates; and
- (2) indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

ab. “*Debtor*” means:

- (1) a person having an interest, other than a

security interest or other lien, in the collateral, whether or not the person is an obligor;

(2) a seller of accounts, chattel paper, payment intangibles, or promissory notes; or

(3) a consignee.

ac. “*Deposit account*” means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

ad. “*Document*” means a document of title or a receipt of the type described in section 554.7201, subsection 2.

ae. “*Electronic chattel paper*” means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

af. “*Encumbrance*” means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

ag. “*Equipment*” means goods other than inventory, farm products, or consumer goods.

ah. “*Farm products*” means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:

(1) crops grown, growing, or to be grown, including:

(a) crops produced on trees, vines, and bushes; and

(b) aquatic goods produced in aquacultural operations;

(2) livestock, born or unborn, including aquatic goods produced in aquacultural operations;

(3) supplies used or produced in a farming operation; or

(4) products of crops or livestock in their unmanufactured states.

ai. “*Farming operation*” means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

aj. “*File number*” means the number assigned to an initial financing statement pursuant to section 554.9519, subsection 1.

ak. “*Filing office*” means an office designated in section 554.9501 as the place to file a financing statement.

al. “*Filing-office rule*” means a rule adopted pursuant to section 554.9526.

am. “*Financing statement*” means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

an. “*Fixture filing*” means the filing of a financing statement covering goods that are or are to become fixtures and satisfying section 554.9502, subsections 1 and 2. The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

ao. “*Fixtures*” means goods that have become so related to particular real property that an interest in them arises under real property law.

ap. “*General intangible*” means any personal

property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

aq. “*Good faith*” means honesty in fact and the observance of reasonable commercial standards of fair dealing.

ar. “*Goods*” means all things that are movable when a security interest attaches. The term includes (i) fixtures, (ii) standing timber that is to be cut and removed under a conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and (v) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

as. “*Governmental unit*” means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

at. “*Health care insurance receivable*” means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health care goods or services provided.

au. “*Instrument*” means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include (i) investment property, (ii) letters of credit, or (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

av. “*Inventory*” means goods, other than farm products, which:

(1) are leased by a person as lessor;

(2) are held by a person for sale or lease or to be furnished under a contract of service;

(3) are furnished by a person under a contract of service; or

(4) consist of raw materials, work in process, or materials used or consumed in a business.

aw. “*Investment property*” means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

ax. “*Jurisdiction of organization*”, with respect to a registered organization, means the jurisdiction under whose law the organization is organized.

ay. “*Letter-of-credit right*” means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

az. “*Lien creditor*” means:

(1) a creditor that has acquired a lien on the property involved by attachment, levy, or the like;

(2) an assignee for benefit of creditors from the time of assignment;

(3) a trustee in bankruptcy from the date of the filing of the petition; or

(4) a receiver in equity from the time of appointment.

ba. “*Manufactured home*” means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States secretary of housing and urban development and complies with the standards established under Title 42 of the United States Code.

bb. “*Manufactured-home transaction*” means a secured transaction:

(1) that creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or

(2) in which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

bc. “*Mortgage*” means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.

bd. “*New debtor*” means a person that becomes bound as debtor under section 554.9203, subsection 4, by a security agreement previously entered into by another person.

be. “*New value*” means (i) money, (ii) money’s

worth in property, services, or new credit, or (iii) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

bf. “*Noncash proceeds*” means proceeds other than cash proceeds.

bg. “*Obligor*” means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, (i) owes payment or other performance of the obligation, (ii) has provided property other than the collateral to secure payment or other performance of the obligation, or (iii) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

bh. “*Original debtor*”, except as used in section 554.9310, subsection 3, means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under section 554.9203, subsection 4.

bi. “*Payment intangible*” means a general intangible under which the account debtor’s principal obligation is a monetary obligation.

bj. “*Person related to*”, with respect to an individual, means:

(1) the spouse of the individual;

(2) a brother, brother-in-law, sister, or sister-in-law of the individual;

(3) an ancestor or lineal descendant of the individual or the individual’s spouse; or

(4) any other relative, by blood or marriage, of the individual or the individual’s spouse who shares the same home with the individual.

bk. “*Person related to*”, with respect to an organization, means:

(1) a person directly or indirectly controlling, controlled by, or under common control with the organization;

(2) an officer or director of, or a person performing similar functions with respect to, the organization;

(3) an officer or director of, or a person performing similar functions with respect to, a person described in subparagraph (1);

(4) the spouse of an individual described in subparagraph (1), (2), or (3); or

(5) an individual who is related by blood or marriage to an individual described in subparagraph (1), (2), (3), or (4) and shares the same home with the individual.

bl. “*Proceeds*”, except as used in section 554.9609, subsection 2, means the following property:

(1) whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;

(2) whatever is collected on, or distributed on account of, collateral;

(3) rights arising out of collateral;

(4) to the extent of the value of collateral, claims arising out of the loss, nonconformity, or in-

interference with the use of, defects or infringement of rights in, or damage to, the collateral; or

(5) to the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

bm. "Promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

bn. "Proposal" means a record authenticated by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to sections 554.9620, 554.9621, and 554.9622.

bo. "Public-finance transaction" means a secured transaction in connection with which:

- (1) debt securities are issued;
- (2) all or a portion of the securities issued have an initial stated maturity of at least twenty years; and
- (3) the debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state.

bp. "Pursuant to commitment", with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

bq. "Record", except as used in "for record", "of record", "record or legal title", and "record owner", means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

br. "Registered organization" means an organization organized solely under the law of a single state or the United States and as to which the state or the United States must maintain a public record showing the organization to have been organized.

bs. "Secondary obligor" means an obligor to the extent that:

- (1) the obligor's obligation is secondary; or
- (2) the obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

bt. "Secured party" means:

- (1) a person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;
- (2) a person that holds an agricultural lien;
- (3) a consignor;
- (4) a person to which accounts, chattel paper,

payment intangibles, or promissory notes have been sold;

(5) a trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or

(6) a person that holds a security interest arising under section 554.2401, 554.2505, 554.2711, subsection 3, section 554.4210, 554.5118, or 554.13508, subsection 5.

bu. "Security agreement" means an agreement that creates or provides for a security interest.

bv. "Send", in connection with a record or notification, means:

(1) to deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or

(2) to cause the record or notification to be received within the time that it would have been received if properly sent under subparagraph (1).

bw. "Software" means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

bx. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

by. "Supporting obligation" means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.

bz. "Tangible chattel paper" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

ca. "Termination statement" means an amendment of a financing statement which:

- (1) identifies, by its file number, the initial financing statement to which it relates; and
- (2) indicates either that it is a termination statement or that the identified financing statement is no longer effective.

cb. "Transmitting utility" means a person primarily engaged in the business of:

- (1) operating a railroad, subway, street railway, or trolley bus;
- (2) transmitting communications electrically, electromagnetically, or by light;
- (3) transmitting goods by pipeline or sewer; or
- (4) transmitting or producing and transmitting electricity, steam, gas, or water.

2. *Definitions in other Articles.* The following definitions in other Articles apply to this Article:

"Applicant"	Section 554.5102
"Beneficiary"	Section 554.5102
"Broker"	Section 554.8102

“Certificated security”	Section 554.8102
“Check”	Section 554.3104
“Clearing corporation”	Section 554.8102
“Contract for sale”	Section 554.2106
“Customer”	Section 554.4104
“Entitlement holder”	Section 554.8102
“Financial asset”	Section 554.8102
“Holder in due course”	Section 554.3302
“Issuer” (with respect to a letter of credit or letter-of-credit right)	Section 554.5102
“Issuer” (with respect to a security)	Section 554.8201
“Lease”	Section 554.13103
“Lease agreement”	Section 554.13103
“Lease contract”	Section 554.13103
“Leasehold interest”	Section 554.13103
“Lessee”	Section 554.13103
“Lessee in ordinary course of business”	Section 554.13103
“Lessor”	Section 554.13103
“Lessor’s residual interest”	Section 554.13103
“Letter of credit”	Section 554.5102
“Merchant”	Section 554.2104
“Negotiable instrument”	Section 554.3104
“Nominated person”	Section 554.5102
“Note”	Section 554.3104
“Proceeds of a letter of credit”	Section 554.5114
“Prove”	Section 554.3103
“Sale”	Section 554.2106
“Securities account”	Section 554.8501
“Securities intermediary”	Section 554.8102
“Security”	Section 554.8102
“Security certificate”	Section 554.8102
“Security entitlement”	Section 554.8102
“Uncertificated security”	Section 554.8102

3. *Article 1 definitions and principles.* Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

4. *Federal Food Security Act.* For purposes of the Federal Food Security Act, 7 U.S.C. § 1631, written notice shall be considered to be received by the person to whom it was delivered if the notice is delivered in hand to the person, or mailed by certified or registered mail with the proper postage and properly addressed to the person to whom it was sent. The refusal of a person to whom a notice is so mailed to accept delivery of the notice shall be considered receipt.

2000 Acts, ch 1149, §2, 185, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9103 Purchase-money security interest — application of payments — burden of establishing.

1. *Definitions.* In this section:

a. “*purchase-money collateral*” means goods or

software that secures a purchase-money obligation incurred with respect to that collateral; and
b. “*purchase-money obligation*” means an obligation of an obligor incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used.

2. *Purchase-money security interest in goods.* A security interest in goods is a purchase-money security interest:

a. to the extent that the goods are purchase-money collateral with respect to that security interest;

b. if the security interest is in inventory that is or was purchase-money collateral, also to the extent that the security interest secures a purchase-money obligation incurred with respect to other inventory in which the secured party holds or held a purchase-money security interest; and

c. also to the extent that the security interest secures a purchase-money obligation incurred with respect to software in which the secured party holds or held a purchase-money security interest.

3. *Purchase-money security interest in software.* A security interest in software is a purchase-money security interest to the extent that the security interest also secures a purchase-money obligation incurred with respect to goods in which the secured party holds or held a purchase-money security interest if:

a. the debtor acquired its interest in the software in an integrated transaction in which it acquired an interest in the goods; and

b. the debtor acquired its interest in the software for the principal purpose of using the software in the goods.

4. *Consignor’s inventory purchase-money security interest.* The security interest of a consignor in goods that are the subject of a consignment is a purchase-money security interest in inventory.

5. *Application of payment in nonconsumer-goods transaction.* In a transaction other than a consumer-goods transaction, if the extent to which a security interest is a purchase-money security interest depends on the application of a payment to a particular obligation, the payment must be applied:

a. in accordance with any reasonable method of application to which the parties agree;

b. in the absence of the parties’ agreement to a reasonable method, in accordance with any intention of the obligor manifested at or before the time of payment; or

c. in the absence of an agreement to a reasonable method and a timely manifestation of the obligor’s intention, in the following order:

(1) to obligations that are not secured; and

(2) if more than one obligation is secured, to obligations secured by purchase-money security interests in the order in which those obligations were incurred.

6. *No loss of status of purchase-money security interest in nonconsumer-goods transaction.* In a transaction other than a consumer-goods transaction, a purchase-money security interest does not lose its status as such, even if:

- a. the purchase-money collateral also secures an obligation that is not a purchase-money obligation;
- b. collateral that is not purchase-money collateral also secures the purchase-money obligation; or
- c. the purchase-money obligation has been renewed, refinanced, consolidated, or restructured.

7. *Burden of proof in nonconsumer-goods transaction.* In a transaction other than a consumer-goods transaction, a secured party claiming a purchase-money security interest has the burden of establishing the extent to which the security interest is a purchase-money security interest.

8. *Nonconsumer-goods transactions — no inference.* The limitation of the rules in subsections 5, 6, and 7 to transactions other than consumer-goods transactions is intended to leave to the court the determination of the proper rules in consumer-goods transactions. The court may not infer from that limitation the nature of the proper rule in consumer-goods transactions and may continue to apply established approaches.

2000 Acts, ch 1149, §3, 185, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9104 Control of deposit account.

1. *Requirements for control.* A secured party has control of a deposit account if:

- a. the secured party is the bank with which the deposit account is maintained;
- b. the debtor, secured party, and bank have agreed in an authenticated record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the deposit account without further consent by the debtor; or
- c. the secured party becomes the bank's customer with respect to the deposit account.

2. *Debtor's right to direct disposition.* A secured party that has satisfied subsection 1 has control, even if the debtor retains the right to direct the disposition of funds from the deposit account.

2000 Acts, ch 1149, §4, 185, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9105 Control of electronic chattel paper.

A secured party has control of electronic chattel paper if the record or records comprising the chattel paper are created, stored, and assigned in such a manner that:

1. a single authoritative copy of the record or

records exists which is unique, identifiable and, except as otherwise provided in subsections 4, 5, and 6, unalterable;

2. the authoritative copy identifies the secured party as the assignee of the record or records;

3. the authoritative copy is communicated to and maintained by the secured party or its designated custodian;

4. copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the participation of the secured party;

5. each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

6. any revision of the authoritative copy is readily identifiable as an authorized or unauthorized revision.

2000 Acts, ch 1149, §5, 185, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9106 Control of investment property.

1. *Control under section 554.8106.* A person has control of a certificated security, uncertificated security, or security entitlement as provided in section 554.8106.

2. *Control of commodity contract.* A secured party has control of a commodity contract if:

- a. the secured party is the commodity intermediary with which the commodity contract is carried; or
- b. the commodity customer, secured party, and commodity intermediary have agreed that the commodity intermediary will apply any value distributed on account of the commodity contract as directed by the secured party without further consent by the commodity customer.

3. *Effect of control of securities account or commodity account.* A secured party having control of all security entitlements or commodity contracts carried in a securities account or commodity account has control over the securities account or commodity account.

2000 Acts, ch 1149, §6, 185, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9107 Control of letter-of-credit right.

A secured party has control of a letter-of-credit right to the extent of any right to payment or performance by the issuer or any nominated person if the issuer or nominated person has consented to an assignment of proceeds of the letter of credit under section 554.5114, subsection 3, or otherwise applicable law or practice.

2000 Acts, ch 1149, §7, 185, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9108 Sufficiency of description.

1. *Sufficiency of description.* Except as otherwise provided in subsections 3, 4, and 5, a description of personal or real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.

2. *Examples of reasonable identification.* Except as otherwise provided in subsection 4, a description of collateral reasonably identifies the collateral if it identifies the collateral by:

- a. specific listing;
- b. category;
- c. except as otherwise provided in subsection 5, a type of collateral defined in this chapter;
- d. quantity;
- e. computational or allocational formula or procedure; or
- f. except as otherwise provided in subsection 3, any other method, if the identity of the collateral is objectively determinable.

3. *Supergeneric description not sufficient.* A description of collateral as “all the debtor’s assets” or “all the debtor’s personal property” or using words of similar import does not reasonably identify the collateral.

4. *Investment property.* Except as otherwise provided in subsection 5, a description of a security entitlement, securities account, or commodity account is sufficient if it describes:

- a. the collateral by those terms or as investment property; or
- b. the underlying financial asset or commodity contract.

5. *When description by type insufficient.* A description only by type of collateral defined in this chapter is an insufficient description of:

- a. a commercial tort claim; or
- b. in a consumer transaction, consumer goods, a security entitlement, a securities account, or a commodity account.

2000 Acts, ch 1149, §8, 185, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001
NEW section

B. APPLICABILITY OF ARTICLE**554.9109 Scope.**

1. *General scope of Article.* Except as otherwise provided in subsections 3 and 4, this Article applies to:

- a. a transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;
- b. an agricultural lien;
- c. a sale of accounts, chattel paper, payment intangibles, or promissory notes;
- d. a consignment;
- e. a security interest arising under section 554.2401, 554.2505, 554.2711, subsection 3, section 554.9110, or 554.13508, subsection 5; and

f. a security interest arising under section 554.4210 or 554.5118.

2. *Security interest in secured obligation.* The application of this Article to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this Article does not apply.

3. *Extent to which Article does not apply.* This Article does not apply to the extent that:

- a. a statute, regulation, or treaty of the United States preempts this Article;
- b. another statute of this state expressly governs the creation, perfection, priority, or enforcement of a security interest created by this state or a governmental unit of this state;
- c. a statute of another state, a foreign country, or a governmental unit of another state or a foreign country, other than a statute generally applicable to security interests, expressly governs creation, perfection, priority, or enforcement of a security interest created by the state, country, or governmental unit; or
- d. the rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under section 554.5114.

4. *Inapplicability of Article.* This Article does not apply to:

- a. a landlord’s lien, other than an agricultural lien;
- b. a lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but section 554.9333 applies with respect to priority of the lien;
- c. an assignment of a claim for wages, salary, or other compensation of an employee;
- d. a sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose;
- e. an assignment of accounts, chattel paper, payment intangibles, or promissory notes which is for the purpose of collection only;
- f. an assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract;
- g. an assignment of a single account, payment intangible, or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;
- h. a transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health care provider of a health care insurance receivable and any subsequent assignment of the right to payment, but sections 554.9315 and 554.9322 apply with respect to proceeds and priorities in proceeds;
- i. an assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;
- j. a right of recoupment or setoff, but:
 - (1) section 554.9340 applies with respect to

the effectiveness of rights of recoupment or setoff against deposit accounts; and

(2) section 554.9404 applies with respect to defenses or claims of an account debtor;

k. the creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for:

(1) liens on real property in sections 554.9203 and 554.9308;

(2) fixtures in section 554.9334;

(3) fixture filings in sections 554.9501, 554.9502, 554.9512, 554.9516, and 554.9519; and

(4) security agreements covering personal and real property in section 554.9604;

l. an assignment of a claim arising in tort, other than a commercial tort claim, but sections 554.9315 and 554.9322 apply with respect to proceeds and priorities in proceeds;

m. an assignment of a deposit account in a consumer transaction, but sections 554.9315 and 554.9322 apply with respect to proceeds and priorities in proceeds;

n. a transfer, other than a transfer pursuant to chapter 419, by this state or a governmental unit within this state in connection with a public-finance transaction or a transaction that would be a public-finance transaction but for failure to meet the criterion set forth in section 554.9102, subsection 1, paragraph “*bo*”, subparagraph (2); or

o. an assignment of a claim or right to receive any of the following:

(1) compensation for injuries or sickness as provided in 26 U.S.C. § 104(a)(1) or (2).

(2) benefits under a special needs trust as provided in 42 U.S.C. § 1396p(d)(4).

2000 Acts, ch 1149, §9, 185, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

NEW section

554.9110 Security interests arising under Article 2 or 13.

A security interest arising under section 554.2401, 554.2505, 554.2711, subsection 3, or section 554.13508, subsection 5, is subject to this Article. However, until the debtor obtains possession of the goods:

1. the security interest is enforceable, even if section 554.9203, subsection 2, paragraph “*c*”, has not been satisfied;

2. filing is not required to perfect the security interest;

3. the rights of the secured party after default by the debtor are governed by Article 2 or 13; and

4. the security interest has priority over a conflicting security interest created by the debtor.

2000 Acts, ch 1149, §10, 185, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

NEW section

554.9112 through 554.9116 Repealed by 2000 Acts, ch 1149, § 185, 187.

Repeal is effective July 1, 2001; 2000 Acts, ch 1149, §187

PART 2

EFFECTIVENESS OF SECURITY AGREEMENT — ATTACHMENT OF SECURITY INTEREST — RIGHTS OF PARTIES TO SECURITY AGREEMENT

A. EFFECTIVENESS AND ATTACHMENT

554.9201 General effectiveness of security agreement.

1. *General effectiveness.* Except as otherwise provided in this chapter, a security agreement is effective according to its terms between the parties, against purchasers of the collateral, and against creditors.

2. *Applicable consumer laws.* A transaction subject to this Article is subject to any applicable rule of law which establishes a different rule for consumers, including as provided in chapter 537, or any other statute or regulation of this state that regulates the rates, charges, agreements, and practices for loans, credit sales, or other extensions of credit, and to any consumer protection statute or regulation.

3. *Other applicable law controls.* In case of conflict between this Article and a rule of law, statute, or regulation described in subsection 2, the rule of law, statute, or regulation controls. Failure to comply with a statute or regulation described in subsection 2 has only the effect the statute or regulation specifies.

4. *Further deference to other applicable law.* This Article does not:

a. validate any rate, charge, agreement, or practice that violates a rule of law, statute, or regulation described in subsection 2; or

b. extend the application of the rule of law, statute, or regulation to a transaction not otherwise subject to it.

2000 Acts, ch 1149, §11, 185, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

NEW section

554.9202 Title to collateral immaterial.

Except as otherwise provided with respect to consignments or sales of accounts, chattel paper, payment intangibles, or promissory notes, the provisions of this Article with regard to rights and obligations apply whether title to collateral is in the secured party or the debtor.

2000 Acts, ch 1149, §12, 185, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

NEW section

554.9203 Attachment and enforceability of security interest — proceeds — supporting obligations — formal requisites.

1. *Attachment.* A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.

2. *Enforceability.* Except as otherwise provided in subsections 3 through 9, a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

a. value has been given;

b. the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and

c. one of the following conditions is met:

(1) the debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;

(2) the collateral is not a certificated security and is in the possession of the secured party under section 554.9313 pursuant to the debtor's security agreement;

(3) the collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under section 554.8301 pursuant to the debtor's security agreement; or

(4) the collateral is deposit accounts, electronic chattel paper, investment property, or letter-of-credit rights, and the secured party has control under section 554.9104, 554.9105, 554.9106, or 554.9107 pursuant to the debtor's security agreement.

3. *Other UCC provisions.* Subsection 2 is subject to section 554.4210 on the security interest of a collecting bank, section 554.5118 on the security interest of a letter-of-credit issuer or nominated person, section 554.9110 on a security interest arising under Article 2 or 13, and section 554.9206 on security interests in investment property.

4. *When person becomes bound by another person's security agreement.* A person becomes bound as debtor by a security agreement entered into by another person if, by operation of law other than this Article or by contract:

a. the security agreement becomes effective to create a security interest in the person's property; or

b. the person becomes generally obligated for the obligations of the other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.

5. *Effect of new debtor becoming bound.* If a new debtor becomes bound as debtor by a security agreement entered into by another person:

a. the agreement satisfies subsection 2, paragraph "c", with respect to existing or after-acquired property of the new debtor to the extent the property is described in the agreement; and

b. another agreement is not necessary to make a security interest in the property enforceable.

6. *Proceeds and supporting obligations.* The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by section 554.9315 and is also attachment of a security interest in a supporting obligation for the collateral.

7. *Lien securing right to payment.* The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.

8. *Security entitlement carried in securities account.* The attachment of a security interest in a securities account is also attachment of a security interest in the security entitlements carried in the securities account.

9. *Commodity contracts carried in commodity account.* The attachment of a security interest in a commodity account is also attachment of a security interest in the commodity contracts carried in the commodity account.

2000 Acts, ch 1149, §13, 185, 187

Sufficiency of description, see §554.9108

Effectiveness of financing statement if new debtor bound, see §554.9508

Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

NEW section

554.9204 After-acquired property — future advances.

1. *After-acquired collateral.* Except as otherwise provided in subsection 2, a security agreement may create or provide for a security interest in after-acquired collateral.

2. *When after-acquired property clause not effective.* A security interest does not attach under a term constituting an after-acquired property clause to:

a. consumer goods, other than an accession when given as additional security, unless the debtor acquires rights in them within ten days after the secured party gives value; or

b. a commercial tort claim.

3. *Future advances and other value.* A security agreement may provide that collateral secures, or that accounts, chattel paper, payment intangibles, or promissory notes are sold in connection with, future advances or other value, whether or not the advances or value are given pursuant to commitment.

2000 Acts, ch 1149, §14, 185, 187

Accessions, see §554.9335

Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

NEW section

554.9205 Use or disposition of collateral permissible.

1. *When security interest not invalid or fraudulent.* A security interest is not invalid or fraudulent against creditors solely because:

- a. the debtor has the right or ability to:
 - (1) use, commingle, or dispose of all or part of the collateral, including returned or repossessed goods;
 - (2) collect, compromise, enforce, or otherwise deal with collateral;
 - (3) accept the return of collateral or make repossessions; or
 - (4) use, commingle, or dispose of proceeds; or
- b. the secured party fails to require the debtor to account for proceeds or replace collateral.

2. *Requirements of possession not relaxed.* This section does not relax the requirements of possession if attachment, perfection, or enforcement of a security interest depends upon possession of the collateral by the secured party.

2000 Acts, ch 1149, §15, 185, 187
Secured parties rights on disposition of collateral and in proceeds, see §554.9315

Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

NEW section

554.9206 Security interest arising in purchase or delivery of financial asset.

1. *Security interest when person buys through securities intermediary.* A security interest in favor of a securities intermediary attaches to a person's security entitlement if:

- a. the person buys a financial asset through the securities intermediary in a transaction in which the person is obligated to pay the purchase price to the securities intermediary at the time of the purchase; and
- b. the securities intermediary credits the financial asset to the buyer's securities account before the buyer pays the securities intermediary.

2. *Security interest secures obligation to pay for financial asset.* The security interest described in subsection 1 secures the person's obligation to pay for the financial asset.

3. *Security interest in payment against delivery transaction.* A security interest in favor of a person that delivers a certificated security or other financial asset represented by a writing attaches to the security or other financial asset if:

- a. the security or other financial asset:
 - (1) in the ordinary course of business is transferred by delivery with any necessary indorsement or assignment; and
 - (2) is delivered under an agreement between persons in the business of dealing with such securities or financial assets; and
- b. the agreement calls for delivery against payment.

4. *Security interest secures obligation to pay for delivery.* The security interest described in

subsection 3 secures the obligation to make payment for the delivery.

2000 Acts, ch 1149, §16, 185, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001
NEW section

B. RIGHTS AND DUTIES

554.9207 Rights and duties of secured party having possession or control of collateral.

1. *Duty of care when secured party in possession.* Except as otherwise provided in subsection 4, a secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

2. *Expenses, risks, duties, and rights when secured party in possession.* Except as otherwise provided in subsection 4, if a secured party has possession of collateral:

- a. reasonable expenses, including the cost of insurance and payment of taxes or other charges, incurred in the custody, preservation, use, or operation of the collateral are chargeable to the debtor and are secured by the collateral;
- b. the risk of accidental loss or damage is on the debtor to the extent of a deficiency in any effective insurance coverage;
- c. the secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and
- d. the secured party may use or operate the collateral:

- (1) for the purpose of preserving the collateral or its value;
- (2) as permitted by an order of a court having competent jurisdiction; or
- (3) except in the case of consumer goods, in the manner and to the extent agreed by the debtor.

3. *Duties and rights when secured party in possession or control.* Except as otherwise provided in subsection 4, a secured party having possession of collateral or control of collateral under section 554.9104, 554.9105, 554.9106, or 554.9107:

- a. may hold as additional security any proceeds, except money or funds, received from the collateral;
- b. shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and
- c. may create a security interest in the collateral.

4. *Buyer of certain rights to payment.* If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor:

- a. subsection 1 does not apply unless the se-

cured party is entitled under an agreement:

- (1) to charge back uncollected collateral; or
 - (2) otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral; and
- b. subsections 2 and 3 do not apply.

2000 Acts, ch 1149, §17, 185, 187
 Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001
 NEW section

554.9208 Additional duties of secured party having control of collateral.

1. *Applicability of section.* This section applies to cases in which there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations, or otherwise give value.

2. *Duties of secured party after receiving demand from debtor.* Within ten days after receiving an authenticated demand by the debtor:

a. a secured party having control of a deposit account under section 554.9104, subsection 1, paragraph "b", shall send to the bank with which the deposit account is maintained an authenticated statement that releases the bank from any further obligation to comply with instructions originated by the secured party;

b. a secured party having control of a deposit account under section 554.9104, subsection 1, paragraph "c", shall:

- (1) pay the debtor the balance on deposit in the deposit account; or
- (2) transfer the balance on deposit into a deposit account in the debtor's name;

c. a secured party, other than a buyer, having control of electronic chattel paper under section 554.9105 shall:

(1) communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;

(2) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(3) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party;

d. a secured party having control of investment property under section 554.8106, subsection 4, paragraph "b", or section 554.9106, subsection 2, shall send to the securities intermediary or commodity intermediary with which the security en-

titlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party; and

e. a secured party having control of a letter-of-credit right under section 554.9107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party.

2000 Acts, ch 1149, §18, 185, 187
 Remedies for noncompliance, see §554.9625
 Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001
 NEW section

554.9209 Duties of secured party if account debtor has been notified of assignment.

1. *Applicability of section.* Except as otherwise provided in subsection 3, this section applies if:

a. there is no outstanding secured obligation; and

b. the secured party is not committed to make advances, incur obligations, or otherwise give value.

2. *Duties of secured party after receiving demand from debtor.* Within ten days after receiving an authenticated demand by the debtor, a secured party shall send to an account debtor that has received notification of an assignment to the secured party as assignee under section 554.9406, subsection 1, an authenticated record that releases the account debtor from any further obligation to the secured party.

3. *Inapplicability to sales.* This section does not apply to an assignment constituting the sale of an account, chattel paper, or payment intangible.

2000 Acts, ch 1149, §19, 187
 Remedies for noncompliance, see §554.9625
 Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
 NEW section

554.9210 Request for accounting — request regarding list of collateral or statement of account.

1. *Definitions.* In this section:

a. "Request" means a record of a type described in paragraph "b", "c", or "d".

b. "Request for an accounting" means a record authenticated by a debtor requesting that the recipient provide an accounting of the unpaid obligations secured by collateral and reasonably identifying the transaction or relationship that is the subject of the request.

c. "Request regarding a list of collateral" means a record authenticated by a debtor requesting that the recipient approve or correct a list of

what the debtor believes to be the collateral securing an obligation and reasonably identifying the transaction or relationship that is the subject of the request.

d. "Request regarding a statement of account" means a record authenticated by a debtor requesting that the recipient approve or correct a statement indicating what the debtor believes to be the aggregate amount of unpaid obligations secured by collateral as of a specified date and reasonably identifying the transaction or relationship that is the subject of the request.

2. *Duty to respond to requests.* Subject to subsections 3, 4, 5, and 6, a secured party, other than a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor, shall comply with a request within fourteen days after receipt:

a. in the case of a request for an accounting, by authenticating and sending to the debtor an accounting; and

b. in the case of a request regarding a list of collateral or a request regarding a statement of account, by authenticating and sending to the debtor an approval or correction.

3. *Request regarding list of collateral — statement concerning type of collateral.* A secured party that claims a security interest in all of a particular type of collateral owned by the debtor may comply with a request regarding a list of collateral by sending to the debtor an authenticated record including a statement to that effect within fourteen days after receipt.

4. *Request regarding list of collateral — no interest claimed.* A person that receives a request regarding a list of collateral, claims no interest in the collateral when it receives the request, and claimed an interest in the collateral at an earlier time shall comply with the request within fourteen days after receipt by sending to the debtor an authenticated record:

a. disclaiming any interest in the collateral; and

b. if known to the recipient, providing the name and mailing address of any assignee or successor to the recipient's interest in the collateral.

5. *Request for accounting or regarding statement of account — no interest in obligation claimed.* A person that receives a request for an accounting or a request regarding a statement of account, claims no interest in the obligations when it receives the request, and claimed an interest in the obligations at an earlier time shall comply with the request within fourteen days after receipt by sending to the debtor an authenticated record:

a. disclaiming any interest in the obligations; and

b. if known to the recipient, providing the name and mailing address of any assignee or successor to the recipient's interest in the obligations.

6. *Charges for responses.* A debtor is entitled without charge to one response to a request under this section during any six-month period. The secured party may require payment of a charge not exceeding twenty-five dollars for each additional response.

2000 Acts, ch 1149, §20, 187
Remedies for noncompliance, see §554.9625
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

PART 3

PERFECTION AND PRIORITY

A. LAW GOVERNING PERFECTION AND PRIORITY

554.9301 Law governing perfection and priority of security interests.

Except as otherwise provided in sections 554.9303, 554.9304, 554.9305, and 554.9306, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

1. Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.

2. While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.

3. Except as otherwise provided in subsection 4, while negotiable documents, goods, instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

a. perfection of a security interest in the goods by filing a fixture filing;

b. perfection of a security interest in timber to be cut; and

c. the effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.

4. The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.

2000 Acts, ch 1149, §21, 185, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9302 Law governing perfection and priority of agricultural liens.

While farm products are located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection,

and the priority of an agricultural lien on the farm products.

2000 Acts, ch 1149, §22, 185, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

NEW section

554.9303 Law governing perfection and priority of security interests in goods covered by a certificate of title.

1. *Applicability of section.* This section applies to goods covered by a certificate of title, even if there is no other relationship between the jurisdiction under whose certificate of title the goods are covered and the goods or the debtor.

2. *When goods covered by certificate of title.* Goods become covered by a certificate of title when a valid application for the certificate of title and the applicable fee are delivered to the appropriate authority. Goods cease to be covered by a certificate of title at the earlier of the time the certificate of title ceases to be effective under the law of the issuing jurisdiction or the time the goods become covered subsequently by a certificate of title issued by another jurisdiction.

3. *Applicable law.* The local law of the jurisdiction under whose certificate of title the goods are covered governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in goods covered by a certificate of title from the time the goods become covered by the certificate of title until the goods cease to be covered by the certificate of title.

2000 Acts, ch 1149, §23, 185, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

NEW section

554.9304 Law governing perfection and priority of security interests in deposit accounts.

1. *Law of bank's jurisdiction governs.* The local law of a bank's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a deposit account maintained with that bank.

2. *Bank's jurisdiction.* The following rules determine a bank's jurisdiction for purposes of this part:

a. If an agreement between the bank and the debtor governing the deposit account expressly provides that a particular jurisdiction is the bank's jurisdiction for purposes of this part, this Article, or this chapter, that jurisdiction is the bank's jurisdiction.

b. If paragraph "a" does not apply and an agreement between the bank and its customer governing the deposit account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

c. If neither paragraph "a" nor paragraph "b"

applies and an agreement between the bank and its customer governing the deposit account expressly provides that the deposit account is maintained at an office in a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

d. If none of the preceding paragraphs applies, the bank's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the customer's account is located.

e. If none of the preceding paragraphs applies, the bank's jurisdiction is the jurisdiction in which the chief executive office of the bank is located.

2000 Acts, ch 1149, §24, 185, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

NEW section

554.9305 Law governing perfection and priority of security interests in investment property.

1. *Governing law — general rules.* Except as otherwise provided in subsection 3, the following rules apply:

a. While a security certificate is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in the certificated security represented thereby.

b. The local law of the issuer's jurisdiction as specified in section 554.8110, subsection 4, governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in an uncertificated security.

c. The local law of the securities intermediary's jurisdiction as specified in section 554.8110, subsection 5, governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a security entitlement or securities account.

d. The local law of the commodity intermediary's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a commodity contract or commodity account.

2. *Commodity intermediary's jurisdiction.* The following rules determine a commodity intermediary's jurisdiction for purposes of this part:

a. If an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that a particular jurisdiction is the commodity intermediary's jurisdiction for purposes of this part, this Article, or this chapter, that jurisdiction is the commodity intermediary's jurisdiction.

b. If paragraph "a" does not apply and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

c. If neither paragraph "a" nor paragraph "b"

applies and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

d. If none of the preceding paragraphs applies, the commodity intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the commodity customer's account is located.

e. If none of the preceding paragraphs applies, the commodity intermediary's jurisdiction is the jurisdiction in which the chief executive office of the commodity intermediary is located.

3. *When perfection governed by law of jurisdiction where debtor located.* The local law of the jurisdiction in which the debtor is located governs:

a. perfection of a security interest in investment property by filing;

b. automatic perfection of a security interest in investment property created by a broker or securities intermediary; and

c. automatic perfection of a security interest in a commodity contract or commodity account created by a commodity intermediary.

2000 Acts, ch 1149, §25, 185, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

NEW section

554.9306 Law governing perfection and priority of security interests in letter-of-credit rights.

1. *Governing law — issuer's or nominated person's jurisdiction.* Subject to subsection 3, the local law of the issuer's jurisdiction or a nominated person's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a letter-of-credit right if the issuer's jurisdiction or nominated person's jurisdiction is a state.

2. *Issuer's or nominated person's jurisdiction.* For purposes of this part, an issuer's jurisdiction or nominated person's jurisdiction is the jurisdiction whose law governs the liability of the issuer or nominated person with respect to the letter-of-credit right as provided in section 554.5116.

3. *When section not applicable.* This section does not apply to a security interest that is perfected only under section 554.9308, subsection 4.

2000 Acts, ch 1149, §26, 185, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

NEW section

554.9307 Location of debtor.

1. *Place of business.* In this section, "place of business" means a place where a debtor conducts its affairs.

2. *Debtor's location — general rules.* Except

as otherwise provided in this section, the following rules determine a debtor's location:

a. A debtor who is an individual is located at the individual's principal residence.

b. A debtor that is an organization and has only one place of business is located at its place of business.

c. A debtor that is an organization and has more than one place of business is located at its chief executive office.

3. *Limitation of applicability of subsection 2.* Subsection 2 applies only if a debtor's residence, place of business, or chief executive office, as applicable, is located in a jurisdiction whose law generally requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording, or registration system as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. If subsection 2 does not apply, the debtor is located in the District of Columbia.

4. *Continuation of location — cessation of existence, etc.* A person that ceases to exist, have a residence, or have a place of business continues to be located in the jurisdiction specified by subsections 2 and 3.

5. *Location of registered organization organized under state law.* A registered organization that is organized under the law of a state is located in that state.

6. *Location of registered organization organized under federal law — bank branches and agencies.* Except as otherwise provided in subsection 9, a registered organization that is organized under the law of the United States and a branch or agency of a bank that is not organized under the law of the United States or a state are located:

a. in the state that the law of the United States designates, if the law designates a state of location;

b. in the state that the registered organization, branch, or agency designates, if the law of the United States authorizes the registered organization, branch, or agency to designate its state of location; or

c. in the District of Columbia, if neither paragraph "a" nor paragraph "b" applies.

7. *Continuation of location — change in status of registered organization.* A registered organization continues to be located in the jurisdiction specified by subsection 5 or 6 notwithstanding:

a. the suspension, revocation, forfeiture, or lapse of the registered organization's status as such in its jurisdiction of organization; or

b. the dissolution, winding up, or cancellation of the existence of the registered organization.

8. *Location of United States.* The United States is located in the District of Columbia.

9. *Location of foreign bank branch or agency if licensed in only one state.* A branch or agency of

a bank that is not organized under the law of the United States or a state is located in the state in which the branch or agency is licensed, if all branches and agencies of the bank are licensed in only one state.

10. *Location of foreign air carrier.* A foreign air carrier under the Federal Aviation Act of 1958, as amended, is located at the designated office of the agent upon which service of process may be made on behalf of the carrier.

11. *Section applies only to this part.* This section applies only for purposes of this part.

2000 Acts, ch 1149, §27, 185, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001
NEW section

B. PERFECTION

554.9308 When security interest or agricultural lien is perfected — continuity of perfection.

1. *Perfection of security interest.* Except as otherwise provided in this section and section 554.9309, a security interest is perfected if it has attached and all of the applicable requirements for perfection in sections 554.9310, 554.9311, 554.9312, 554.9313, 554.9314, 554.9315, and 554.9316 have been satisfied. A security interest is perfected when it attaches if the applicable requirements are satisfied before the security interest attaches.

2. *Perfection of agricultural lien.* An agricultural lien is perfected if it has become effective and all of the applicable requirements for perfection in section 554.9310 have been satisfied. An agricultural lien is perfected when it becomes effective if the applicable requirements are satisfied before the agricultural lien becomes effective.

3. *Continuous perfection — perfection by different methods.* A security interest or agricultural lien is perfected continuously if it is originally perfected by one method under this Article and is later perfected by another method under this Article, without an intermediate period when it was unperfected.

4. *Supporting obligation.* Perfection of a security interest in collateral also perfects a security interest in a supporting obligation for the collateral.

5. *Lien securing right to payment.* Perfection of a security interest in a right to payment or performance also perfects a security interest in a security interest, mortgage, or other lien on personal or real property securing the right.

6. *Security entitlement carried in securities account.* Perfection of a security interest in a securities account also perfects a security interest in the security entitlements carried in the securities account.

7. *Commodity contract carried in commodity account.* Perfection of a security interest in a

commodity account also perfects a security interest in the commodity contracts carried in the commodity account.

2000 Acts, ch 1149, §28, 185, 187
Effectiveness, attachment, and enforceability of security interests, see §554.9201 – 554.9206
Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9309 Security interest perfected upon attachment.

The following security interests are perfected when they attach:

1. a purchase-money security interest in consumer goods, except as otherwise provided in section 554.9311, subsection 2, with respect to consumer goods that are subject to a statute or treaty described in section 554.9311, subsection 1;

2. an assignment of accounts or payment intangibles which does not by itself or in conjunction with other assignments to the same assignee transfer a significant part of the assignor's outstanding accounts or payment intangibles;

3. a sale of a payment intangible;

4. a sale of a promissory note;

5. a security interest created by the assignment of a health care insurance receivable to the provider of the health care goods or services;

6. a security interest arising under section 554.2401, 554.2505, 554.2711, subsection 3, or section 554.13508, subsection 5, until the debtor obtains possession of the collateral;

7. a security interest of a collecting bank arising under section 554.4210;

8. a security interest of an issuer or nominated person arising under section 554.5118;

9. a security interest arising in the delivery of a financial asset under section 554.9206, subsection 3;

10. a security interest in investment property created by a broker or securities intermediary;

11. a security interest in a commodity contract or a commodity account created by a commodity intermediary;

12. an assignment for the benefit of all creditors of the transferor and subsequent transfers by the assignee thereunder; and

13. a security interest created by an assignment of a beneficial interest in a decedent's estate.

2000 Acts, ch 1149, §29, 185, 187
Attachment and enforceability of security interests, see §554.9203 – 554.9206
Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9310 When filing required to perfect security interest or agricultural lien — security interests and agricultural liens to which filing provisions do not apply.

1. *General rule — perfection by filing.* Except as otherwise provided in subsection 2 and section

554.9312, subsection 2, a financing statement must be filed to perfect all security interests and agricultural liens.

2. *Exceptions — filing not necessary.* The filing of a financing statement is not necessary to perfect a security interest:

a. that is perfected under section 554.9308, subsection 4, 5, 6, or 7;

b. that is perfected under section 554.9309 when it attaches;

c. in property subject to a statute, regulation, or treaty described in section 554.9311, subsection 1;

d. in goods in possession of a bailee which is perfected under section 554.9312, subsection 4, paragraph “a” or “b”;

e. in certificated securities, documents, goods, or instruments which is perfected without filing or possession under section 554.9312, subsection 5, 6, or 7;

f. in collateral in the secured party’s possession under section 554.9313;

g. in a certificated security which is perfected by delivery of the security certificate to the secured party under section 554.9313;

h. in deposit accounts, electronic chattel paper, investment property, or letter-of-credit rights which is perfected by control under section 554.9314;

i. in proceeds which is perfected under section 554.9315; or

j. that is perfected under section 554.9316.

3. *Assignment of perfected security interest.* If a secured party assigns a perfected security interest or agricultural lien, a filing under this Article is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

2000 Acts, ch 1149, §30, 185, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

NEW section

554.9311 Perfection of security interests in property subject to certain statutes, regulations, and treaties.

1. *Security interest subject to other law.* Except as otherwise provided in subsection 4, the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

a. a statute, regulation, or treaty of the United States whose requirements for a security interest’s obtaining priority over the rights of a lien creditor with respect to the property preempt section 554.9310, subsection 1;

b. any certificate-of-title statute, including as provided in chapter 321, covering automobiles, trailers, mobile homes, boats, farm tractors, or the like, which provides for a security interest to be indicated on the certificate as a condition or result of

perfection; or

c. a certificate-of-title statute of another jurisdiction which provides for a security interest to be indicated on the certificate as a condition or result of the security interest’s obtaining priority over the rights of a lien creditor with respect to the property.

2. *Compliance with other law.* Compliance with the requirements of a statute, regulation, or treaty described in subsection 1 for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this Article. Except as otherwise provided in subsection 4 and sections 554.9313 and 554.9316, subsections 4 and 5, for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in subsection 1 may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

3. *Duration and renewal of perfection.* Except as otherwise provided in subsection 4 and section 554.9316, subsections 4 and 5, duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation, or treaty described in subsection 1 are governed by the statute, regulation, or treaty. In other respects, the security interest is subject to this Article.

4. *Inapplicability to certain inventory.* During any period in which collateral subject to a statute specified in subsection 1, paragraph “b” is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling goods of that kind, this section does not apply to a security interest in that collateral created by that person.

2000 Acts, ch 1149, §31, 185, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

NEW section

554.9312 Perfection of security interests in chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letter-of-credit rights, and money — perfection by permissive filing — temporary perfection without filing or transfer of possession.

1. *Perfection by filing permitted.* A security interest in chattel paper, negotiable documents, instruments, or investment property may be perfected by filing.

2. *Control or possession of certain collateral.* Except as otherwise provided in section 554.9315, subsections 3 and 4, for proceeds:

a. a security interest in a deposit account may be perfected only by control under section 554.9314;

b. and except as otherwise provided in section

554.9308, subsection 4, a security interest in a letter-of-credit right may be perfected only by control under section 554.9314; and

c. a security interest in money may be perfected only by the secured party's taking possession under section 554.9313.

3. *Goods covered by negotiable document.* While goods are in the possession of a bailee that has issued a negotiable document covering the goods:

a. a security interest in the goods may be perfected by perfecting a security interest in the document; and

b. a security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.

4. *Goods covered by nonnegotiable document.* While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:

a. issuance of a document in the name of the secured party;

b. the bailee's receipt of notification of the secured party's interest; or

c. filing as to the goods.

5. *Temporary perfection — new value.* A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession for a period of twenty days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement.

6. *Temporary perfection — goods or documents made available to debtor.* A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for twenty days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:

a. ultimate sale or exchange; or

b. loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.

7. *Temporary perfection — delivery of security certificate or instrument to debtor.* A perfected security interest in a certificated security or instrument remains perfected for twenty days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:

a. ultimate sale or exchange; or

b. presentation, collection, enforcement, renewal, or registration of transfer.

8. *Expiration of temporary perfection.* After the twenty-day period specified in subsection 5, 6, or 7 expires, perfection depends upon compliance

with this Article.

2000 Acts, ch 1149, §32, 185, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

NEW section

554.9313 When possession by or delivery to secured party perfects security interest without filing.

1. *Perfection by possession or delivery.* Except as otherwise provided in subsection 2, a secured party may perfect a security interest in negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under section 554.8301.

2. *Goods covered by certificate of title.* With respect to goods covered by a certificate of title issued by this state, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in section 554.9316, subsection 4.

3. *Collateral in possession of person other than debtor.* With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:

a. the person in possession authenticates a record acknowledging that it holds possession of the collateral for the secured party's benefit; or

b. the person takes possession of the collateral after having authenticated a record acknowledging that it will hold possession of collateral for the secured party's benefit.

4. *Time of perfection by possession — continuation of perfection.* If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.

5. *Time of perfection by delivery — continuation of perfection.* A security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under section 554.8301 and remains perfected by delivery until the debtor obtains possession of the security certificate.

6. *Acknowledgment not required.* A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.

7. *Effectiveness of acknowledgment — no duties or confirmation.* If a person acknowledges that it holds possession for the secured party's benefit:

a. the acknowledgment is effective under subsection 3 or section 554.8301, subsection 1, even if the acknowledgment violates the rights of a debtor; and

b. unless the person otherwise agrees or law other than this Article otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

8. *Secured party's delivery to person other than debtor.* A secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the debtor's business if the person was instructed before the delivery or is instructed contemporaneously with the delivery:

a. to hold possession of the collateral for the secured party's benefit; or

b. to redeliver the collateral to the secured party.

9. *Effect of delivery under subsection 8 — no duties or confirmation.* A secured party does not relinquish possession, even if a delivery under subsection 8 violates the rights of a debtor. A person to which collateral is delivered under subsection 8 does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or law other than this Article otherwise provides.

2000 Acts, ch 1149, §33, 185, 187
Rights and duties of secured party having possession or control of collateral, §554.9207, 554.9208
Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9314 Perfection by control.

1. *Perfection by control.* A security interest in investment property, deposit accounts, letter-of-credit rights, or electronic chattel paper may be perfected by control of the collateral under section 554.9104, 554.9105, 554.9106, or 554.9107.

2. *Specified collateral — time of perfection by control — continuation of perfection.* A security interest in deposit accounts, electronic chattel paper, or letter-of-credit rights is perfected by control under section 554.9104, 554.9105, or 554.9107 when the secured party obtains control and remains perfected by control only while the secured party retains control.

3. *Investment property — time of perfection by control — continuation of perfection.* A security interest in investment property is perfected by control under section 554.9106 from the time the secured party obtains control and remains perfected by control until:

a. the secured party does not have control; and
b. one of the following occurs:

(1) if the collateral is a certificated security, the debtor has or acquires possession of the security certificate;

(2) if the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner; or

(3) if the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

2000 Acts, ch 1149, §34, 185, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9315 Secured party's rights on disposition of collateral and in proceeds.

1. *Disposition of collateral — continuation of security interest or agricultural lien — proceeds.* Except as otherwise provided in this Article and in section 554.2403, subsection 2:

a. a security interest or agricultural lien continues in collateral notwithstanding sale, lease, license, exchange, or other disposition thereof unless the secured party authorized the disposition free of the security interest or agricultural lien; and

b. a security interest attaches to any identifiable proceeds of collateral.

2. *When commingled proceeds identifiable.* Proceeds that are commingled with other property are identifiable proceeds:

a. if the proceeds are goods, to the extent provided by section 554.9336; and

b. if the proceeds are not goods, to the extent that the secured party identifies the proceeds by a method of tracing, including application of equitable principles, that is permitted under law other than this Article with respect to commingled property of the type involved.

3. *Perfection of security interest in proceeds.* A security interest in proceeds is a perfected security interest if the security interest in the original collateral was perfected.

4. *Continuation of perfection.* A perfected security interest in proceeds becomes unperfected on the twenty-first day after the security interest attaches to the proceeds unless:

a. the following conditions are satisfied:

(1) a filed financing statement covers the original collateral;

(2) the proceeds are collateral in which a security interest may be perfected by filing in the office in which the financing statement has been filed; and

(3) the proceeds are not acquired with cash proceeds;

b. the proceeds are identifiable cash proceeds; or

c. the security interest in the proceeds is perfected other than under subsection 3 when the security interest attaches to the proceeds or within twenty days thereafter.

5. *When perfected security interest in proceeds becomes unperfected.* If a filed financing statement covers the original collateral, a security interest in proceeds which remains perfected under

subsection 4, paragraph “a”, becomes unperfected at the later of:

- a. when the effectiveness of the filed financing statement lapses under section 554.9515 or is terminated under section 554.9513; or
- b. the twenty-first day after the security interest attaches to the proceeds.

2000 Acts, ch 1149, §35, 185, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9316 Continued perfection of security interest following change in governing law.

1. *General rule — effect on perfection of change in governing law.* A security interest perfected pursuant to the law of the jurisdiction designated in section 554.9301, subsection 1, or section 554.9305, subsection 3, remains perfected until the earliest of:

- a. the time perfection would have ceased under the law of that jurisdiction;
- b. the expiration of four months after a change of the debtor’s location to another jurisdiction; or
- c. the expiration of one year after a transfer of collateral to a person that thereby becomes a debtor and is located in another jurisdiction.

2. *Security interest perfected or unperfected under law of new jurisdiction.* If a security interest described in subsection 1 becomes perfected under the law of the other jurisdiction before the earliest time or event described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earliest time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

3. *Possessory security interest in collateral moved to new jurisdiction.* A possessory security interest in collateral, other than goods covered by a certificate of title and as-extracted collateral consisting of goods, remains continuously perfected if:

- a. the collateral is located in one jurisdiction and subject to a security interest perfected under the law of that jurisdiction;
- b. thereafter the collateral is brought into another jurisdiction; and
- c. upon entry into the other jurisdiction, the security interest is perfected under the law of the other jurisdiction.

4. *Goods covered by certificate of title from this state.* Except as otherwise provided in subsection 5, a security interest in goods covered by a certificate of title which is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from this state remains perfected until the security interest would have become unperfected under the

law of the other jurisdiction had the goods not become so covered.

5. *When subsection 4 security interest becomes unperfected against purchasers.* A security interest described in subsection 4 becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value if the applicable requirements for perfection under section 554.9311, subsection 2, or section 554.9313 are not satisfied before the earlier of:

- a. the time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from this state; or
- b. the expiration of four months after the goods had become so covered.

6. *Change in jurisdiction of bank, issuer, nominated person, securities intermediary, or commodity intermediary.* A security interest in deposit accounts, letter-of-credit rights, or investment property which is perfected under the law of the bank’s jurisdiction, the issuer’s jurisdiction, a nominated person’s jurisdiction, the securities intermediary’s jurisdiction, or the commodity intermediary’s jurisdiction, as applicable, remains perfected until the earlier of:

- a. the time the security interest would have become unperfected under the law of that jurisdiction; or
- b. the expiration of four months after a change of the applicable jurisdiction to another jurisdiction.

7. *Subsection 6 security interest perfected or unperfected under law of new jurisdiction.* If a security interest described in subsection 6 becomes perfected under the law of the other jurisdiction before the earlier of the time or the end of the period described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

2000 Acts, ch 1149, §36, 185, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001
NEW section

C. PRIORITY

554.9317 Interests that take priority over or take free of security interest or agricultural lien.

1. *Conflicting security interests and rights of lien creditors.* A security interest or agricultural lien is subordinate to the rights of:

- a. a person entitled to priority under section 554.9322; and
- b. except as otherwise provided in subsection 5, a person that becomes a lien creditor before the

earlier of the time:

(1) The security interest or agricultural lien is perfected; or

(2) One of the conditions specified in section 554.9203, subsection 2, paragraph “c” is met and a financing statement covering the collateral is filed.

2. *Buyers that receive delivery.* Except as otherwise provided in subsection 5, a buyer, other than a secured party, of tangible chattel paper, documents, goods, instruments, or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

3. *Lessees that receive delivery.* Except as otherwise provided in subsection 5, a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

4. *Licensees and buyers of certain collateral.* A licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic chattel paper, general intangibles, or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

5. *Purchase-money security interest.* Except as otherwise provided in sections 554.9320 and 554.9321, if a person files a financing statement with respect to a purchase-money security interest before or within twenty days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.

2000 Acts, ch 1149, §37, 185, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9318 No interest retained in right to payment that is sold — rights and title of seller of account or chattel paper with respect to creditors and purchasers.

1. *Seller retains no interest.* A debtor that has sold an account, chattel paper, payment intangible, or promissory note does not retain a legal or equitable interest in the collateral sold.

2. *Deemed rights of debtor if buyer’s security interest unperfected.* For purposes of determining the rights of creditors of, and purchasers for value of an account or chattel paper from, a debtor that has sold an account or chattel paper, while the buyer’s security interest is unperfected, the debtor is deemed to have rights and title to the account or

chattel paper identical to those the debtor sold.

2000 Acts, ch 1149, §38, 185, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9319 Rights and title of consignee with respect to creditors and purchasers.

1. *Consignee has consignor’s rights.* Except as otherwise provided in subsection 2, for purposes of determining the rights of creditors of, and purchasers for value of goods from, a consignee, while the goods are in the possession of the consignee, the consignee is deemed to have rights and title to the goods identical to those the consignor had or had power to transfer.

2. *Applicability of other law.* For purposes of determining the rights of a creditor of a consignee, law other than this Article determines the rights and title of a consignee while goods are in the consignee’s possession if, under this part, a perfected security interest held by the consignor would have priority over the rights of the creditor.

2000 Acts, ch 1149, §39, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9320 Buyer of goods.

1. *Buyer in ordinary course of business.* Except as otherwise provided in subsection 5, a buyer in ordinary course of business, other than a person buying farm products from a person engaged in farming operations, takes free of a security interest created by the buyer’s seller, even if the security interest is perfected and the buyer knows of its existence.

2. *Buyer of consumer goods.* Except as otherwise provided in subsection 5, a buyer of goods from a person who used or bought the goods for use primarily for personal, family, or household purposes takes free of a security interest, even if perfected, if the buyer buys:

- a. without knowledge of the security interest;
- b. for value;
- c. primarily for the buyer’s personal, family, or household purposes; and
- d. before the filing of a financing statement covering the goods.

3. *Effectiveness of filing for subsection 2.* To the extent that it affects the priority of a security interest over a buyer of goods under subsection 2, the period of effectiveness of a filing made in the jurisdiction in which the seller is located is governed by section 554.9316, subsections 1 and 2.

4. *Buyer in ordinary course of business at wellhead or minehead.* A buyer in ordinary course of business buying oil, gas, or other minerals at the wellhead or minehead or after extraction takes free of an interest arising out of an encumbrance.

5. *Possessory security interest not affected.* Subsections 1 and 2 do not affect a security interest in goods in the possession of the secured

party under section 554.9313.

2000 Acts, ch 1149, §40, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9321 Licensee of general intangible and lessee of goods in ordinary course of business.

1. *Licensee in ordinary course of business.* In this section, “*licensee in ordinary course of business*” means a person that becomes a licensee of a general intangible in good faith, without knowledge that the license violates the rights of another person in the general intangible, and in the ordinary course from a person in the business of licensing general intangibles of that kind. A person becomes a licensee in the ordinary course if the license to the person comports with the usual or customary practices in the kind of business in which the licensor is engaged or with the licensor’s own usual or customary practices.

2. *Rights of licensee in ordinary course of business.* A licensee in ordinary course of business takes its rights under a nonexclusive license free of a security interest in the general intangible created by the licensor, even if the security interest is perfected and the licensee knows of its existence.

3. *Rights of lessee in ordinary course of business.* A lessee in ordinary course of business takes its leasehold interest free of a security interest in the goods created by the lessor, even if the security interest is perfected and the lessee knows of its existence.

2000 Acts, ch 1149, §41, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9322 Priorities among conflicting security interests in and agricultural liens on same collateral.

1. *General priority rules.* Except as otherwise provided in this section, priority among conflicting security interests and agricultural liens in the same collateral is determined according to the following rules:

a. Conflicting perfected security interests and agricultural liens rank according to priority in time of filing or perfection. Priority dates from the earlier of the time a filing covering the collateral is first made or the security interest or agricultural lien is first perfected, if there is no period thereafter when there is neither filing nor perfection.

b. A perfected security interest or agricultural lien has priority over a conflicting unperfected security interest or agricultural lien.

c. The first security interest or agricultural lien to attach or become effective has priority if conflicting security interests and agricultural liens are unperfected.

2. *Time of perfection — proceeds and supporting obligations.* For the purposes of subsection 1,

paragraph “a”:

a. the time of filing or perfection as to a security interest in collateral is also the time of filing or perfection as to a security interest in proceeds; and

b. the time of filing or perfection as to a security interest in collateral supported by a supporting obligation is also the time of filing or perfection as to a security interest in the supporting obligation.

3. *Special priority rules — proceeds and supporting obligations.* Except as otherwise provided in subsection 6, a security interest in collateral which qualifies for priority over a conflicting security interest under section 554.9327, 554.9328, 554.9329, 554.9330, or 554.9331 also has priority over a conflicting security interest in:

a. any supporting obligation for the collateral; and

b. proceeds of the collateral if:

(1) the security interest in proceeds is perfected;

(2) the proceeds are cash proceeds or of the same type as the collateral; and

(3) in the case of proceeds that are proceeds of proceeds, all intervening proceeds are cash proceeds, proceeds of the same type as the collateral, or an account relating to the collateral.

4. *First-to-file priority rule for certain collateral.* Subject to subsection 5 and except as otherwise provided in subsection 6, if a security interest in chattel paper, deposit accounts, negotiable documents, instruments, investment property, or letter-of-credit rights is perfected by a method other than filing, conflicting perfected security interests in proceeds of the collateral rank according to priority in time of filing.

5. *Applicability of subsection 4.* Subsection 4 applies only if the proceeds of the collateral are not cash proceeds, chattel paper, negotiable documents, instruments, investment property, or letter-of-credit rights.

6. *Limitations on subsections 1 through 5.* Subsections 1 through 5 are subject to:

a. subsection 7 and the other provisions of this part;

b. section 554.4210 with respect to a security interest of a collecting bank;

c. section 554.5118 with respect to a security interest of an issuer or nominated person; and

d. section 554.9110 with respect to a security interest arising under Article 2 or 13.

7. *Priority under agricultural lien statute.* A perfected agricultural lien on collateral has priority over a conflicting security interest in or agricultural lien on the same collateral if the statute creating the agricultural lien so provides.

2000 Acts, ch 1149, §42, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9323 Future advances.

1. *When priority based on time of advance.* Except as otherwise provided in subsection

tion 3, for purposes of determining the priority of a perfected security interest under section 554.9322, subsection 1, paragraph “a”, perfection of the security interest dates from the time an advance is made to the extent that the security interest secures an advance that:

a. is made while the security interest is perfected only:

- (1) under section 554.9309 when it attaches; or
- (2) temporarily under section 554.9312, subsection 5, 6, or 7;

b. is not made pursuant to a commitment entered into before or while the security interest is perfected by a method other than under section 554.9309 or 554.9312, subsection 5, 6, or 7.

2. *Lien creditor.* Except as otherwise provided in subsection 3, a security interest is subordinate to the rights of a person that becomes a lien creditor to the extent that the security interest secures an advance made more than forty-five days after the person becomes a lien creditor unless the advance is made:

- a. without knowledge of the lien; or
- b. pursuant to a commitment entered into without knowledge of the lien.

3. *Buyer of receivables.* Subsections 1 and 2 do not apply to a security interest held by a secured party that is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor.

4. *Buyer of goods.* Except as otherwise provided in subsection 5, a buyer of goods other than a buyer in ordinary course of business takes free of a security interest to the extent that it secures advances made after the earlier of:

- a. the time the secured party acquires knowledge of the buyer’s purchase; or
- b. forty-five days after the purchase.

5. *Advances made pursuant to commitment — priority of buyer of goods.* Subsection 4 does not apply if the advance is made pursuant to a commitment entered into without knowledge of the buyer’s purchase and before the expiration of the forty-five-day period.

6. *Lessee of goods.* Except as otherwise provided in subsection 7, a lessee of goods, other than a lessee in ordinary course of business, takes the leasehold interest free of a security interest to the extent that it secures advances made after the earlier of:

- a. the time the secured party acquires knowledge of the lease; or
- b. forty-five days after the lease contract becomes enforceable.

7. *Advances made pursuant to commitment — priority of lessee of goods.* Subsection 6 does not apply if the advance is made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the forty-five-day period.

2000 Acts, ch 1149, §43, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1,

2001, see Code 2001
NEW section

554.9324 Priority of purchase-money security interests.

1. *General rule — purchase-money priority.* Except as otherwise provided in subsection 7, a perfected purchase-money security interest in goods other than inventory or livestock has priority over a conflicting security interest in the same goods, and, except as otherwise provided in section 554.9327, a perfected security interest in its identifiable proceeds also has priority, if the purchase-money security interest is perfected when the debtor receives possession of the collateral or within twenty days thereafter.

2. *Inventory purchase-money priority.* Subject to subsection 3 and except as otherwise provided in subsection 7, a perfected purchase-money security interest in inventory has priority over a conflicting security interest in the same inventory, has priority over a conflicting security interest in chattel paper or an instrument constituting proceeds of the inventory and in proceeds of the chattel paper, if so provided in section 554.9330, and, except as otherwise provided in section 554.9327, also has priority in identifiable cash proceeds of the inventory to the extent the identifiable cash proceeds are received on or before the delivery of the inventory to a buyer, if:

- a. the purchase-money security interest is perfected when the debtor receives possession of the inventory;
- b. the purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;
- c. the holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and
- d. the notification states that the person sending the notification has or expects to acquire a purchase-money security interest in inventory of the debtor and describes the inventory.

3. *Holders of conflicting inventory security interests to be notified.* Subsection 2, paragraphs “b” through “d”, apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of inventory:

- a. if the purchase-money security interest is perfected by filing, before the date of the filing; or
- b. if the purchase-money security interest is temporarily perfected without filing or possession under section 554.9312, subsection 6, before the beginning of the twenty-day period thereunder.

4. *Livestock purchase-money priority.* Subject to subsection 5 and except as otherwise provided in subsection 7, a perfected purchase-money security interest in livestock that are farm products has priority over a conflicting security interest in the same livestock, and, except as otherwise provided in section 554.9327, a perfected se-

curity interest in their identifiable proceeds and identifiable products in their unmanufactured states also has priority, if:

a. the purchase-money security interest is perfected when the debtor receives possession of the livestock;

b. the purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;

c. the holder of the conflicting security interest receives the notification within six months before the debtor receives possession of the livestock; and

d. the notification states that the person sending the notification has or expects to acquire a purchase-money security interest in livestock of the debtor and describes the livestock.

5. *Holders of conflicting livestock security interests to be notified.* Subsection 4, paragraphs “b” through “d”, apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of livestock:

a. if the purchase-money security interest is perfected by filing, before the date of the filing; or

b. if the purchase-money security interest is temporarily perfected without filing or possession under section 554.9312, subsection 6, before the beginning of the twenty-day period thereunder.

6. *Software purchase-money priority.* Except as otherwise provided in subsection 7, a perfected purchase-money security interest in software has priority over a conflicting security interest in the same collateral, and, except as otherwise provided in section 554.9327, a perfected security interest in its identifiable proceeds also has priority, to the extent that the purchase-money security interest in the goods in which the software was acquired for use has priority in the goods and proceeds of the goods under this section.

7. *Conflicting purchase-money security interests.* If more than one security interest qualifies for priority in the same collateral under subsection 1, 2, 4, or 6:

a. a security interest securing an obligation incurred as all or part of the price of the collateral has priority over a security interest securing an obligation incurred for value given to enable the debtor to acquire rights in or the use of collateral; and

b. in all other cases, section 554.9322, subsection 1, applies to the qualifying security interests.

2000 Acts, ch 1149, §44, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9325 Priority of security interests in transferred collateral.

1. *Subordination of security interest in transferred collateral.* Except as otherwise provided in subsection 2, a security interest created by a debtor is subordinate to a security interest in the same collateral created by another person if:

a. the debtor acquired the collateral subject to the security interest created by the other person;

b. the security interest created by the other person was perfected when the debtor acquired the collateral; and

c. there is no period thereafter when the security interest is unperfected.

2. *Limitation of subsection 1 subordination.* Subsection 1 subordinates a security interest only if the security interest:

a. otherwise would have priority solely under section 554.9322, subsection 1, or section 554.9324; or

b. arose solely under section 554.2711, subsection 3, or section 554.13508, subsection 5.

2000 Acts, ch 1149, §45, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9326 Priority of security interests created by new debtor.

1. *Subordination of security interest created by new debtor.* Subject to subsection 2, a security interest created by a new debtor which is perfected by a filed financing statement that is effective solely under section 554.9508 in collateral in which a new debtor has or acquires rights is subordinate to a security interest in the same collateral which is perfected other than by a filed financing statement that is effective solely under section 554.9508.

2. *Priority under other provisions — multiple original debtors.* The other provisions of this part determine the priority among conflicting security interests in the same collateral perfected by filed financing statements that are effective solely under section 554.9508. However, if the security agreements to which a new debtor became bound as debtor were not entered into by the same original debtor, the conflicting security interests rank according to priority in time of the new debtor’s having become bound.

2000 Acts, ch 1149, §46, 187
“Original debtor” and “new debtor” defined; §554.9102
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9327 Priority of security interests in deposit account.

The following rules govern priority among conflicting security interests in the same deposit account:

1. A security interest held by a secured party having control of the deposit account under section 554.9104 has priority over a conflicting security interest held by a secured party that does not have control.

2. Except as otherwise provided in subsections 3 and 4, security interests perfected by control under section 554.9314 rank according to priority in time of obtaining control.

3. Except as otherwise provided in subsection

4, a security interest held by the bank with which the deposit account is maintained has priority over a conflicting security interest held by another secured party.

4. A security interest perfected by control under section 554.9104, subsection 1, paragraph “c”, has priority over a security interest held by the bank with which the deposit account is maintained.

2000 Acts, ch 1149, §47, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9328 Priority of security interests in investment property.

The following rules govern priority among conflicting security interests in the same investment property:

1. A security interest held by a secured party having control of investment property under section 554.9106 has priority over a security interest held by a secured party that does not have control of the investment property.

2. Except as otherwise provided in subsections 3 and 4, conflicting security interests held by secured parties each of which has control under section 554.9106 rank according to priority in time of:

a. if the collateral is a security, obtaining control;

b. if the collateral is a security entitlement carried in a securities account and:

(1) if the secured party obtained control under section 554.8106, subsection 4, paragraph “a”, the secured party’s becoming the person for which the securities account is maintained;

(2) if the secured party obtained control under section 554.8106, subsection 4, paragraph “b”, the securities intermediary’s agreement to comply with the secured party’s entitlement orders with respect to security entitlements carried or to be carried in the securities account; or

(3) if the secured party obtained control through another person under section 554.8106, subsection 4, paragraph “c”, the time on which priority would be based under this subsection if the other person were the secured party; or

c. if the collateral is a commodity contract carried with a commodity intermediary, the satisfaction of the requirement for control specified in section 554.9106, subsection 2, paragraph “b”, with respect to commodity contracts carried or to be carried with the commodity intermediary.

3. A security interest held by a securities intermediary in a security entitlement or a securities account maintained with the securities intermediary has priority over a conflicting security interest held by another secured party.

4. A security interest held by a commodity intermediary in a commodity contract or a commodity account maintained with the commodity intermediary has priority over a conflicting security in-

terest held by another secured party.

5. A security interest in a certificated security in registered form which is perfected by taking delivery under section 554.9313, subsection 1, and not by control under section 554.9314 has priority over a conflicting security interest perfected by a method other than control.

6. Conflicting security interests created by a broker, securities intermediary, or commodity intermediary which are perfected without control under section 554.9106 rank equally.

7. In all other cases, priority among conflicting security interests in investment property is governed by sections 554.9322 and 554.9323.

2000 Acts, ch 1149, §48, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9329 Priority of security interests in letter-of-credit right.

The following rules govern priority among conflicting security interests in the same letter-of-credit right:

1. A security interest held by a secured party having control of the letter-of-credit right under section 554.9107 has priority to the extent of its control over a conflicting security interest held by a secured party that does not have control.

2. Security interests perfected by control under section 554.9314 rank according to priority in time of obtaining control.

2000 Acts, ch 1149, §49, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9330 Priority of purchaser of chattel paper or instrument.

1. *Purchaser’s priority — security interest claimed merely as proceeds.* A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed merely as proceeds of inventory subject to a security interest if:

a. in good faith and in the ordinary course of the purchaser’s business, the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under section 554.9105; and

b. the chattel paper does not indicate that it has been assigned to an identified assignee other than the purchaser.

2. *Purchaser’s priority — other security interests.* A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed other than merely as proceeds of inventory subject to a security interest if the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under section 554.9105 in good faith, in the ordinary course of the purchaser’s business, and without knowledge that the purchase violates the rights of the secured party.

3. *Chattel paper purchaser’s priority in pro-*

ceeds. Except as otherwise provided in section 554.9327, a purchaser having priority in chattel paper under subsection 1 or 2 also has priority in proceeds of the chattel paper to the extent that:

a. section 554.9322 provides for priority in the proceeds; or

b. the proceeds consist of the specific goods covered by the chattel paper or cash proceeds of the specific goods, even if the purchaser's security interest in the proceeds is unperfected.

4. *Instrument purchaser's priority.* Except as otherwise provided in section 554.9331, subsection 1, a purchaser of an instrument has priority over a security interest in the instrument perfected by a method other than possession if the purchaser gives value and takes possession of the instrument in good faith and without knowledge that the purchase violates the rights of the secured party.

5. *Holder of purchase-money security interest gives new value.* For purposes of subsections 1 and 2, the holder of a purchase-money security interest in inventory gives new value for chattel paper constituting proceeds of the inventory.

6. *Indication of assignment gives knowledge.* For purposes of subsections 2 and 4, if chattel paper or an instrument indicates that it has been assigned to an identified secured party other than the purchaser, a purchaser of the chattel paper or instrument has knowledge that the purchase violates the rights of the secured party.

2000 Acts, ch 1149, §50, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9331 Priority of rights of purchasers of instruments, documents, and securities under other articles — priority of interests in financial assets and security entitlements under Article 8.

1. *Rights under Articles 3, 7, and 8 not limited.* This Article does not limit the rights of a holder in due course of a negotiable instrument, a holder to which a negotiable document of title has been duly negotiated, or a protected purchaser of a security. These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in Articles 3, 7, and 8.

2. *Protection under Article 8.* This Article does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of a claim under Article 8.

3. *Filing not notice.* Filing under this Article does not constitute notice of a claim or defense to the holders, or purchasers, or persons described in subsections 1 and 2.

2000 Acts, ch 1149, §51, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9332 Transfer of money — transfer of funds from deposit account.

1. *Transferee of money.* A transferee of money takes the money free of a security interest unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

2. *Transferee of funds from deposit account.* A transferee of funds from a deposit account takes the funds free of a security interest in the deposit account unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

2000 Acts, ch 1149, §52, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9333 Priority of certain liens arising by operation of law.

1. *Possessory lien.* In this section, “*possessory lien*” means an interest, other than a security interest or an agricultural lien:

a. which secures payment or performance of an obligation for services or materials furnished with respect to goods by a person in the ordinary course of the person's business;

b. which is created by statute or rule of law in favor of the person; and

c. whose effectiveness depends on the person's possession of the goods.

2. *Priority of possessory lien.* A possessory lien on goods has priority over a security interest in the goods unless the lien is created by a statute that expressly provides otherwise.

2000 Acts, ch 1149, §53, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9334 Priority of security interests in fixtures and crops.

1. *Security interest in fixtures under this Article.* A security interest under this Article may be created in goods that are fixtures or may continue in goods that become fixtures. A security interest does not exist under this Article in ordinary building materials incorporated into an improvement on land.

2. *Security interest in fixtures under real-property law.* This Article does not prevent creation of an encumbrance upon fixtures under real property law.

3. *General rule — subordination of security interest in fixtures.* In cases not governed by subsections 4 through 8, a security interest in fixtures is subordinate to a conflicting interest of an encumbrancer or owner of the related real property other than the debtor.

4. *Fixtures purchase-money priority.* Except as otherwise provided in subsection 8, a perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of

record in or is in possession of the real property and:

a. the security interest is a purchase-money security interest;

b. the interest of the encumbrancer or owner arises before the goods become fixtures; and

c. the security interest is perfected by a fixture filing before the goods become fixtures or within twenty days thereafter.

5. *Priority of security interest in fixtures over interests in real property.* A perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if:

a. the debtor has an interest of record in the real property or is in possession of the real property and the security interest:

(1) is perfected by a fixture filing before the interest of the encumbrancer or owner is of record; and

(2) has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner;

b. before the goods become fixtures, the security interest is perfected by any method permitted by this Article and the fixtures are readily removable:

(1) factory or office machines;

(2) equipment that is not primarily used or leased for use in the operation of the real property; or

(3) replacements of domestic appliances that are consumer goods;

c. the conflicting interest is a lien on the real property obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this Article; or

d. the security interest is:

(1) created in a manufactured home in a manufactured-home transaction; and

(2) perfected pursuant to a statute described in section 554.9311, subsection 1, paragraph "b".

6. *Priority based on consent, disclaimer, or right to remove.* A security interest in fixtures, whether or not perfected, has priority over a conflicting interest of an encumbrancer or owner of the real property if:

a. the encumbrancer or owner has, in an authenticated record, consented to the security interest or disclaimed an interest in the goods as fixtures; or

b. the debtor has a right to remove the goods as against the encumbrancer or owner.

7. *Continuation of subsection 6, paragraph "b", priority.* The priority of the security interest under subsection 6, paragraph "b", continues for a reasonable time if the debtor's right to remove the goods as against the encumbrancer or owner terminates.

8. *Priority of construction mortgage.* A mortgage is a construction mortgage to the extent that it secures an obligation incurred for the construc-

tion of an improvement on land, including the acquisition cost of the land, if a recorded record of the mortgage so indicates. Except as otherwise provided in subsections 5 and 6, a security interest in fixtures is subordinate to a construction mortgage if a record of the mortgage is recorded before the goods become fixtures and the goods become fixtures before the completion of the construction. A mortgage has this priority to the same extent as a construction mortgage to the extent that it is given to refinance a construction mortgage.

9. *Priority of security interest in crops.* Except as provided in subsection 10, a perfected security interest in crops growing on real property has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property.

10. *Agricultural liens prevail.* The provisions of this Article regarding agricultural liens prevail over any inconsistent provisions of subsection 9.

2000 Acts, ch 1149, §54, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9335 Accessions.

1. *Creation of security interest in accession.* A security interest may be created in an accession and continues in collateral that becomes an accession.

2. *Perfection of security interest.* If a security interest is perfected when the collateral becomes an accession, the security interest remains perfected in the collateral.

3. *Priority of security interest.* Except as otherwise provided in subsection 4, the other provisions of this part determine the priority of a security interest in an accession.

4. *Compliance with certificate-of-title statute.* A security interest in an accession is subordinate to a security interest in the whole which is perfected by compliance with the requirements of a certificate-of-title statute under section 554.9311, subsection 2.

5. *Removal of accession after default.* After default, subject to part 6, a secured party may remove an accession from other goods if the security interest in the accession has priority over the claims of every person having an interest in the whole.

6. *Reimbursement following removal.* A secured party that removes an accession from other goods under subsection 5 shall promptly reimburse any holder of a security interest or other lien on, or owner of, the whole or of the other goods, other than the debtor, for the cost of repair of any physical injury to the whole or the other goods. The secured party need not reimburse the holder or owner for any diminution in value of the whole or the other goods caused by the absence of the ac-

cession removed or by any necessity for replacing it. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

2000 Acts, ch 1149, §55, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9336 Commingled goods.

1. *Commingled goods.* In this section, “*commingled goods*” means goods that are physically united with other goods in such a manner that their identity is lost in a product or mass.

2. *No security interest in commingled goods as such.* A security interest does not exist in commingled goods as such. However, a security interest may attach to a product or mass that results when goods become commingled goods.

3. *Attachment of security interest to product or mass.* If collateral becomes commingled goods, a security interest attaches to the product or mass.

4. *Perfection of security interest.* If a security interest in collateral is perfected before the collateral becomes commingled goods, the security interest that attaches to the product or mass under subsection 3 is perfected.

5. *Priority of security interest.* Except as otherwise provided in subsection 6, the other provisions of this part determine the priority of a security interest that attaches to the product or mass under subsection 3.

6. *Conflicting security interests in product or mass.* If more than one security interest attaches to the product or mass under subsection 3, the following rules determine priority:

a. A security interest that is perfected under subsection 4 has priority over a security interest that is unperfected at the time the collateral becomes commingled goods.

b. If more than one security interest is perfected under subsection 4, the security interests rank equally in proportion to the value of the collateral at the time it became commingled goods.

2000 Acts, ch 1149, §56, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9337 Priority of security interests in goods covered by certificate of title.

If, while a security interest in goods is perfected by any method under the law of another jurisdiction, this state issues a certificate of title that does not show that the goods are subject to the security interest or contain a statement that they may be subject to security interests not shown on the certificate:

1. a buyer of the goods, other than a person in the business of selling goods of that kind, takes free of the security interest if the buyer gives value and receives delivery of the goods after issuance of

the certificate and without knowledge of the security interest; and

2. the security interest is subordinate to a conflicting security interest in the goods that attaches, and is perfected under section 554.9311, subsection 2, after issuance of the certificate and without the conflicting secured party’s knowledge of the security interest.

2000 Acts, ch 1149, §57, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9338 Priority of security interest or agricultural lien perfected by filed financing statement providing certain incorrect information.

If a security interest or agricultural lien is perfected by a filed financing statement providing information described in section 554.9516, subsection 2, paragraph “e”, which is incorrect at the time the financing statement is filed:

1. the security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the conflicting security interest gives value in reasonable reliance upon the incorrect information; and

2. a purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of chattel paper, documents, goods, instruments, or a security certificate, receives delivery of the collateral.

2000 Acts, ch 1149, §58, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9339 Priority subject to subordination.

This Article does not preclude subordination by agreement by a person entitled to priority.

2000 Acts, ch 1149, §59, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

D. RIGHTS OF BANK

554.9340 Effectiveness of right of recoupment or setoff against deposit account.

1. *Exercise of recoupment or setoff.* Except as otherwise provided in subsection 3, a bank with which a deposit account is maintained may exercise any right of recoupment or setoff against a secured party that holds a security interest in the deposit account.

2. *Recoupment or setoff not affected by security interest.* Except as otherwise provided in subsection 3, the application of this Article to a security interest in a deposit account does not affect a right of recoupment or setoff of the secured party as to a deposit account maintained with the secured party.

3. *When setoff ineffective.* The exercise by a bank of a setoff against a deposit account is ineffective against a secured party that holds a security interest in the deposit account which is perfected by control under section 554.9104, subsection 1, paragraph “c”, if the setoff is based on a claim against the debtor.

2000 Acts, ch 1149, §60, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9341 Bank’s rights and duties with respect to deposit account.

Except as otherwise provided in section 554.9340, subsection 3, and unless the bank otherwise agrees in an authenticated record, a bank’s rights and duties with respect to a deposit account maintained with the bank are not terminated, suspended, or modified by:

1. the creation, attachment, or perfection of a security interest in the deposit account;
2. the bank’s knowledge of the security interest; or
3. the bank’s receipt of instructions from the secured party.

2000 Acts, ch 1149, §61, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9342 Bank’s right to refuse to enter into or disclose existence of control agreement.

This Article does not require a bank to enter into an agreement of the kind described in section 554.9104, subsection 1, paragraph “b”, even if its customer so requests or directs. A bank that has entered into such an agreement is not required to confirm the existence of the agreement to another person unless requested to do so by its customer.

2000 Acts, ch 1149, §62, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

PART 4

RIGHTS OF THIRD PARTIES

554.9401 Alienability of debtor’s rights.

1. *Other law governs alienability — exceptions.* Except as otherwise provided in subsection 2 and sections 554.9406, 554.9407, 554.9408, and 554.9409, whether a debtor’s rights in collateral may be voluntarily or involuntarily transferred is governed by law other than this Article.

2. *Agreement does not prevent transfer.* An agreement between the debtor and secured party which prohibits a transfer of the debtor’s rights in collateral or makes the transfer a default does not prevent the transfer from taking effect.

2000 Acts, ch 1149, §63, 185, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1,

2001, see Code 2001
NEW section

554.9402 Secured party not obligated on contract of debtor or in tort.

The existence of a security interest, agricultural lien, or authority given to a debtor to dispose of or use collateral, without more, does not subject a secured party to liability in contract or tort for the debtor’s acts or omissions.

2000 Acts, ch 1149, §64, 185, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9403 Agreement not to assert defenses against assignee.

1. *Value.* In this section, “value” has the meaning provided in section 554.3303, subsection 1.

2. *Agreement not to assert claim or defense.* Except as otherwise provided in this section, an agreement between an account debtor and an assignor not to assert against an assignee any claim or defense that the account debtor may have against the assignor is enforceable by an assignee that takes an assignment:

- a. for value;
- b. in good faith;
- c. without notice of a claim of a property or possessory right to the property assigned; and
- d. without notice of a defense or claim in recoupment of the type that may be asserted against a person entitled to enforce a negotiable instrument under section 554.3305, subsection 1.

3. *When subsection 2 not applicable.* Subsection 2 does not apply to defenses of a type that may be asserted against a holder in due course of a negotiable instrument under section 554.3305, subsection 2.

4. *Omission of required statement in consumer transaction.* In a consumer transaction, if a record evidences the account debtor’s obligation, law other than this Article requires that the record include a statement to the effect that the rights of an assignee are subject to claims or defenses that the account debtor could assert against the original obligee, and the record does not include such a statement:

- a. the record has the same effect as if the record included such a statement; and
- b. the account debtor may assert against an assignee those claims and defenses that would have been available if the record included such a statement.

5. *Rule for individual under other law.* This section is subject to law other than this Article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

6. *Other law not displaced.* Except as otherwise provided in subsection 4, this section does not

2000 Acts, ch 1149, §64, 185, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1,

displace law other than this Article which gives effect to an agreement by an account debtor not to assert a claim or defense against an assignee.

2000 Acts, ch 1149, §65, 185, 187
 Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001
 NEW section

554.9404 Rights acquired by assignee — claims and defenses against assignee.

1. *Assignee's rights subject to terms, claims, and defenses — exceptions.* Unless an account debtor has made an enforceable agreement not to assert defenses or claims, and subject to subsections 2 through 5, the rights of an assignee are subject to:

a. all terms of the agreement between the account debtor and assignor and any defense or claim in recoupment arising from the transaction that gave rise to the contract; and

b. any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives a notification of the assignment authenticated by the assignor or the assignee.

2. *Account debtor's claim reduces amount owed to assignee.* Subject to subsection 3 and except as otherwise provided in subsection 4, the claim of an account debtor against an assignor may be asserted against an assignee under subsection 1 only to reduce the amount the account debtor owes.

3. *Rule for individual under other law.* This section is subject to law other than this Article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

4. *Omission of required statement in consumer transaction.* In a consumer transaction, if a record evidences the account debtor's obligation, law other than this Article requires that the record include a statement to the effect that the account debtor's recovery against an assignee with respect to claims and defenses against the assignor may not exceed amounts paid by the account debtor under the record, and the record does not include such a statement, the extent to which a claim of an account debtor against the assignor may be asserted against an assignee is determined as if the record included such a statement.

5. *Inapplicability to health care insurance receivable.* This section does not apply to an assignment of a health care insurance receivable.

2000 Acts, ch 1149, §66, 185, 187
 Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001
 NEW section

554.9405 Modification of assigned contract.

1. *Effect of modification on assignee.* A modi-

fication of or substitution for an assigned contract is effective against an assignee if made in good faith. The assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that the modification or substitution is a breach of contract by the assignor. This subsection is subject to subsections 2 through 4.

2. *Applicability of subsection 1.* Subsection 1 applies to the extent that:

a. the right to payment or a part thereof under an assigned contract has not been fully earned by performance; or

b. the right to payment or a part thereof has been fully earned by performance and the account debtor has not received notification of the assignment under section 554.9406, subsection 1.

3. *Rule for individual under other law.* This section is subject to law other than this Article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

4. *Inapplicability to health care insurance receivable.* This section does not apply to an assignment of a health care insurance receivable.

2000 Acts, ch 1149, §67, 185, 187
 Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001
 NEW section

554.9406 Discharge of account debtor — notification of assignment — identification and proof of assignment — restrictions on assignment of accounts, chattel paper, payment intangibles, and promissory notes ineffective.

1. *Discharge of account debtor — effect of notification.* Subject to subsections 2 through 9, an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

2. *When notification ineffective.* Subject to subsection 8, notification is ineffective under subsection 1:

a. if it does not reasonably identify the rights assigned;

b. to the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this Article; or

c. at the option of an account debtor, if the notification notifies the account debtor to make less

than the full amount of any installment or other periodic payment to the assignee, even if:

(1) only a portion of the account, chattel paper, or payment intangible has been assigned to that assignee;

(2) a portion has been assigned to another assignee; or

(3) the account debtor knows that the assignment to that assignee is limited.

3. *Proof of assignment.* Subject to subsection 8, if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection 1.

4. *Term restricting assignment generally ineffective.* Except as otherwise provided in subsection 5 and sections 554.9407 and 554.13303, and subject to subsection 8, a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

a. prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or

b. provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

5. *Inapplicability of subsection 4 to certain sales.* Subsection 4 does not apply to the sale of a payment intangible or promissory note.

6. *Legal restrictions on assignment generally ineffective.* Except as otherwise provided in sections 554.9407 and 554.13303 and subject to subsections 8 and 9, a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:

a. prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in the account or chattel paper; or

b. provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.

7. *Subsection 2, paragraph "c", not waiv-*

able. Subject to subsection 8, an account debtor may not waive or vary its option under subsection 2, paragraph "c".

8. *Rule for individual under other law.* This section is subject to law other than this Article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

9. *Inapplicability to health care insurance receivable.* This section does not apply to an assignment of a health care insurance receivable.

10. *Section prevails over specified inconsistent law.* This section prevails over any inconsistent provision of an existing or future statute, rule, or regulation of this state unless the provision is contained in a statute of this state, refers expressly to this section, and states that the provision prevails over this section.

2000 Acts, ch 1149, §68, 185, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9407 Restrictions on creation or enforcement of security interest in leasehold interest or in lessor's residual interest.

1. *Term restricting assignment generally ineffective.* Except as otherwise provided in subsection 2, a term in a lease agreement is ineffective to the extent that it:

a. prohibits, restricts, or requires the consent of a party to the lease to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, an interest of a party under the lease contract or in the lessor's residual interest in the goods; or

b. provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the lease.

2. *Effectiveness of certain terms.* Except as otherwise provided in section 554.13303, subsection 7, a term described in subsection 1, paragraph "b", is effective to the extent that there is:

a. a transfer by the lessee of the lessee's right of possession or use of the goods in violation of the term; or

b. a delegation of a material performance of either party to the lease contract in violation of the term.

3. *Security interest not material impairment.* The creation, attachment, perfection, or enforcement of a security interest in the lessor's interest under the lease contract or the lessor's residual interest in the goods is not a transfer that materially impairs the lessee's prospect of obtaining return performance or materially changes the duty of or materially increases the burden or risk imposed on the lessee within the purview of section

554.13303, subsection 3, unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the lessor.

2000 Acts, ch 1149, §69, 185, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

NEW section

554.9408 Restrictions on assignment of promissory notes, health care insurance receivables, and certain general intangibles ineffective.

1. *Term restricting assignment generally ineffective.* Except as otherwise provided in subsection 2, a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health care insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health care insurance receivable, or general intangible, is ineffective to the extent that the term:

a. would impair the creation, attachment, or perfection of a security interest; or

b. provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health care insurance receivable, or general intangible.

2. *Applicability of subsection 1 to sales of certain rights to payment.* Subsection 1 applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note.

3. *Legal restrictions on assignment generally ineffective.* A rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health care insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:

a. would impair the creation, attachment, or perfection of a security interest; or

b. provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health care insurance receivable, or general intangible.

4. *Limitation on ineffectiveness under subsections 1 and 3.* To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health care insurance receivable or general intangible or a rule of law, statute, or regulation described in subsection 3 would be effective under law other than this Article but is ineffective under subsection 1 or 3, the creation, attachment, or perfection of a security interest in the promissory note, health care insurance receivable, or general intangible:

a. is not enforceable against the person obligated on the promissory note or the account debtor;

b. does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;

c. does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;

d. does not entitle the secured party to use or assign the debtor's rights under the promissory note, health care insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health care insurance receivable, or general intangible;

e. does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and

f. does not entitle the secured party to enforce the security interest in the promissory note, health care insurance receivable, or general intangible.

5. *Section prevails over specified inconsistent law.* This section prevails over any inconsistent provision of an existing or future statute, rule, or regulation of this state unless the provision is contained in a statute of this state, refers expressly to this section, and states that the provision prevails over this section.

2000 Acts, ch 1149, §70, 185, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

NEW section

554.9409 Restrictions on assignment of letter-of-credit rights ineffective.

1. *Term or law restricting assignment generally ineffective.* A term in a letter of credit or a rule of law, statute, regulation, custom, or practice applicable to the letter of credit which prohibits, restricts, or requires the consent of an applicant, issuer, or nominated person to a beneficiary's assignment of or creation of a security interest in a letter-of-credit right is ineffective to the extent that the term or rule of law, statute, regulation, custom, or practice:

a. would impair the creation, attachment, or

perfection of a security interest in the letter-of-credit right; or

b. provides that the assignment or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the letter-of-credit right.

2. *Limitation on ineffectiveness under subsection 1.* To the extent that a term in a letter of credit is ineffective under subsection 1 but would be effective under law other than this Article or a custom or practice applicable to the letter of credit, to the transfer of a right to draw or otherwise demand performance under the letter of credit, or to the assignment of a right to proceeds of the letter of credit, the creation, attachment, or perfection of a security interest in the letter-of-credit right:

a. is not enforceable against the applicant, issuer, nominated person, or transferee beneficiary;

b. imposes no duties or obligations on the applicant, issuer, nominated person, or transferee beneficiary; and

c. does not require the applicant, issuer, nominated person, or transferee beneficiary to recognize the security interest, pay or render performance to the secured party, or accept payment or other performance from the secured party.

2000 Acts, ch 1149, §71, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

PART 5

FILING

A. FILING OFFICE — CONTENTS AND EFFECTIVENESS OF FINANCING STATEMENT

554.9501 Filing office.

1. *Filing offices.* Except as otherwise provided in subsection 2, if the local law of this state governs perfection of a security interest or agricultural lien, the office in which to file a financing statement to perfect the security interest or agricultural lien is:

a. the office designated for the filing or recording of a record of a mortgage on the related real property, if:

(1) the collateral is as-extracted collateral or timber to be cut; or

(2) the financing statement is filed as a fixture filing and the collateral is goods that are or are to become fixtures; or

b. the office of the secretary of state in all other cases, including a case in which the collateral is goods that are or are to become fixtures and the financing statement is not filed as a fixture filing.

2. *Filing office for transmitting utilities.* The office in which to file a financing statement to perfect a security interest in collateral, including fix-

tures, of a transmitting utility is the office of the secretary of state. The financing statement also constitutes a fixture filing as to the collateral indicated in the financing statement which is or is to become fixtures.

2000 Acts, ch 1149, §72, 185, 187
What constitutes filing, §554.9516
Filing office duties, §554.9519 – 554.9527
Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9502 Contents of financing statement — record of mortgage as financing statement — time of filing financing statement.

1. *Sufficiency of financing statement.* Subject to subsection 2, a financing statement is sufficient only if it:

a. provides the name of the debtor;

b. provides the name of the secured party or a representative of the secured party; and

c. indicates the collateral covered by the financing statement.

2. *Real-property-related financing statements.* Except as otherwise provided in section 554.9501, subsection 2, to be sufficient, a financing statement that covers as-extracted collateral or timber to be cut, or which is filed as a fixture filing and covers goods that are or are to become fixtures, must satisfy subsection 1 and also:

a. indicate that it covers this type of collateral;

b. indicate that it is to be filed for record in the real property records;

c. provide a description of the real property to which the collateral is related sufficient to give constructive notice of a mortgage under the law of this state if the description were contained in a record of the mortgage of the real property; and

d. if the debtor does not have an interest of record in the real property, provide the name of a record owner.

3. *Record of mortgage as financing statement.* A record of a mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if:

a. the record indicates the goods or accounts that it covers;

b. the goods are or are to become fixtures related to the real property described in the record or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut;

c. the record satisfies the requirements for a financing statement in this section other than an indication that it is to be filed in the real property records; and

d. the record is duly recorded.

4. *Filing before security agreement or attachment.* A financing statement may be filed before a security agreement is made or a security interest

otherwise attaches.

2000 Acts, ch 1149, §73, 185, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9503 Name of debtor and secured party.

1. *Sufficiency of debtor's name.* A financing statement sufficiently provides the name of the debtor:

a. if the debtor is a registered organization, only if the financing statement provides the name of the debtor indicated on the public record of the debtor's jurisdiction of organization which shows the debtor to have been organized;

b. if the debtor is a decedent's estate, only if the financing statement provides the name of the decedent and indicates that the debtor is an estate;

c. if the debtor is a trust or a trustee acting with respect to property held in trust, only if the financing statement:

(1) provides the name specified for the trust in its organic documents or, if no name is specified, provides the name of the settlor and additional information sufficient to distinguish the debtor from other trusts having one or more of the same settlors; and

(2) indicates, in the debtor's name or otherwise, that the debtor is a trust or is a trustee acting with respect to property held in trust; and

d. in other cases:

(1) if the debtor has a name, only if it provides the individual or organizational name of the debtor; and

(2) if the debtor does not have a name, only if it provides the names of the partners, members, associates, or other persons comprising the debtor.

2. *Additional debtor-related information.* A financing statement that provides the name of the debtor in accordance with subsection 1 is not rendered ineffective by the absence of:

a. a trade name or other name of the debtor; or

b. unless required under subsection 1, paragraph "d", subparagraph (2), names of partners, members, associates, or other persons comprising the debtor.

3. *Debtor's trade name insufficient.* A financing statement that provides only the debtor's trade name does not sufficiently provide the name of the debtor.

4. *Representative capacity.* Failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement.

5. *Multiple debtors and secured parties.* A financing statement may provide the name of more than one debtor and the name of more than one secured party.

2000 Acts, ch 1149, §74, 185, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1,

2001, see Code 2001
NEW section

554.9504 Indication of collateral.

A financing statement sufficiently indicates the collateral that it covers if the financing statement provides:

1. a description of the collateral pursuant to section 554.9108; or

2. an indication that the financing statement covers all assets or all personal property.

2000 Acts, ch 1149, §75, 185, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9505 Filing and compliance with other statutes and treaties for consignments, leases, other bailments, and other transactions.

1. *Use of terms other than debtor and secured party.* A consignor, lessor, or other bailor of goods, a licensor, or a buyer of a payment intangible or promissory note may file a financing statement, or may comply with a statute or treaty described in section 554.9311, subsection 1, using the terms "consignor", "consignee", "lessor", "lessee", "bailor", "bailee", "licensor", "licensee", "owner", "registered owner", "buyer", "seller", or words of similar import, instead of the terms "secured party" and "debtor".

2. *Effect of financing statement under subsection 1.* This part applies to the filing of a financing statement under subsection 1 and, as appropriate, to compliance that is equivalent to filing a financing statement under section 554.9311, subsection 2, but the filing or compliance is not of itself a factor in determining whether the collateral secures an obligation. If it is determined for another reason that the collateral secures an obligation, a security interest held by the consignor, lessor, bailor, licensor, owner, or buyer which attaches to the collateral is perfected by the filing or compliance.

2000 Acts, ch 1149, §76, 185, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9506 Effect of errors or omissions.

1. *Minor errors and omissions.* A financing statement substantially satisfying the requirements of this part is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading.

2. *Financing statement seriously misleading.* Except as otherwise provided in subsection 3, a financing statement that fails sufficiently to provide the name of the debtor in accordance with section 554.9503, subsection 1, is seriously misleading.

3. *Financing statement not seriously misled-*

ing. If a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with section 554.9503, subsection 1, the name provided does not make the financing statement seriously misleading.

4. *Debtor's correct name.* For purposes of section 554.9508, subsection 2, the "debtor's correct name" in subsection 3 means the correct name of the new debtor.

2000 Acts, ch 1149, §77, 185, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

NEW section

554.9507 Effect of certain events on effectiveness of financing statement.

1. *Disposition.* A filed financing statement remains effective with respect to collateral that is sold, exchanged, leased, licensed, or otherwise disposed of and in which a security interest or agricultural lien continues, even if the secured party knows of or consents to the disposition.

2. *Information becoming seriously misleading.* Except as otherwise provided in subsection 3 and section 554.9508, a financing statement is not rendered ineffective if, after the financing statement is filed, the information provided in the financing statement becomes seriously misleading under section 554.9506.

3. *Change in debtor's name.* If a debtor so changes its name that a filed financing statement becomes seriously misleading under section 554.9506:

a. the financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within four months after, the change; and

b. the financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the change, unless an amendment to the financing statement which renders the financing statement not seriously misleading is filed within four months after the change.

2000 Acts, ch 1149, §78, 185, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

NEW section

554.9508 Effectiveness of financing statement if new debtor becomes bound by security agreement.

1. *Financing statement naming original debtor.* Except as otherwise provided in this section, a filed financing statement naming an original debtor is effective to perfect a security interest in collateral in which a new debtor has or acquires rights to the extent that the financing statement would have been effective had the original debtor

acquired rights in the collateral.

2. *Financing statement becoming seriously misleading.* If the difference between the name of the original debtor and that of the new debtor causes a filed financing statement that is effective under subsection 1 to be seriously misleading under section 554.9506:

a. the financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within four months after, the new debtor becomes bound under section 554.9203, subsection 4; and

b. the financing statement is not effective to perfect a security interest in collateral acquired by the new debtor more than four months after the new debtor becomes bound under section 554.9203, subsection 4, unless an initial financing statement providing the name of the new debtor is filed before the expiration of that time.

3. *When section not applicable.* This section does not apply to collateral as to which a filed financing statement remains effective against the new debtor under section 554.9507, subsection 1.

2000 Acts, ch 1149, §79, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

NEW section

554.9509 Persons entitled to file a record.

1. *Person entitled to file record.* A person may file an initial financing statement, amendment that adds collateral covered by a financing statement, or amendment that adds a debtor to a financing statement only if:

a. the debtor authorizes the filing in an authenticated record or pursuant to subsection 2 or 3; or

b. the person holds an agricultural lien that has become effective at the time of filing and the financing statement covers only collateral in which the person holds an agricultural lien.

2. *Security agreement as authorization.* By authenticating or becoming bound as debtor by a security agreement, a debtor or new debtor authorizes the filing of an initial financing statement, and an amendment, covering:

a. the collateral described in the security agreement; and

b. property that becomes collateral under section 554.9315, subsection 1, paragraph "b", whether or not the security agreement expressly covers proceeds.

3. *Acquisition of collateral as authorization.* By acquiring collateral in which a security interest or agricultural lien continues under section 554.9315, subsection 1, paragraph "a", a debtor authorizes the filing of an initial financing statement, and an amendment, covering the collateral and property that becomes collateral under section 554.9315, subsection 1, paragraph "b".

4. *Person entitled to file certain amendments.* A person may file an amendment other

than an amendment that adds collateral covered by a financing statement or an amendment that adds a debtor to a financing statement only if:

a. the secured party of record authorizes the filing; or

b. the amendment is a termination statement for a financing statement as to which the secured party of record has failed to file or send a termination statement as required by section 554.9513, subsection 1 or 3, the debtor authorizes the filing, and the termination statement indicates that the debtor authorized it to be filed.

5. *Multiple secured parties of record.* If there is more than one secured party of record for a financing statement, each secured party of record may authorize the filing of an amendment under subsection 4.

2000 Acts, ch 1149, §80, 187
Damages for improper filing; §554.9625
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9510 Effectiveness of filed record.

1. *Filed record effective if authorized.* A filed record is effective only to the extent that it was filed by a person that may file it under section 554.9509.

2. *Authorization by one secured party of record.* A record authorized by one secured party of record does not affect the financing statement with respect to another secured party of record.

3. *Continuation statement not timely filed.* A continuation statement that is not filed within the six-month period prescribed by section 554.9515, subsection 4, is ineffective.

2000 Acts, ch 1149, §81, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9511 Secured party of record.

1. *Secured party of record.* A secured party of record with respect to a financing statement is a person whose name is provided as the name of the secured party or a representative of the secured party in an initial financing statement that has been filed. If an initial financing statement is filed under section 554.9514, subsection 1, the assignee named in the initial financing statement is the secured party of record with respect to the financing statement.

2. *Amendment naming secured party of record.* If an amendment of a financing statement which provides the name of a person as a secured party or a representative of a secured party is filed, the person named in the amendment is a secured party of record. If an amendment is filed under section 554.9514, subsection 2, the assignee named in the amendment is a secured party of record.

3. *Amendment deleting secured party of record.* A person remains a secured party of record

until the filing of an amendment of the financing statement which deletes the person.

2000 Acts, ch 1149, §82, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9512 Amendment of financing statement.

1. *Amendment of information in financing statement.* Subject to section 554.9509, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or, subject to subsection 5, otherwise amend the information provided in, a financing statement by filing an amendment that:

a. identifies, by its file number, the initial financing statement to which the amendment relates; and

b. if the amendment relates to an initial financing statement filed or recorded in a filing office described in section 554.9501, subsection 1, paragraph "a", provides the date and time that the initial financing statement was filed or recorded and the information specified in section 554.9502, subsection 2.

2. *Period of effectiveness not affected.* Except as otherwise provided in section 554.9515, the filing of an amendment does not extend the period of effectiveness of the financing statement.

3. *Effectiveness of amendment adding collateral.* A financing statement that is amended by an amendment that adds collateral is effective as to the added collateral only from the date of the filing of the amendment.

4. *Effectiveness of amendment adding debtor.* A financing statement that is amended by an amendment that adds a debtor is effective as to the added debtor only from the date of the filing of the amendment.

5. *Certain amendments ineffective.* An amendment is ineffective to the extent it:

a. purports to delete all debtors and fails to provide the name of a debtor to be covered by the financing statement; or

b. purports to delete all secured parties of record and fails to provide the name of a new secured party of record.

2000 Acts, ch 1149, §83, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9513 Termination statement.

1. *Consumer goods.* A secured party shall cause the secured party of record for a financing statement to file a termination statement for the financing statement if the financing statement covers consumer goods and:

a. there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or

b. the debtor did not authorize the filing of the

initial financing statement.

2. *Time for compliance with subsection 1.* To comply with subsection 1, a secured party shall cause the secured party of record to file the termination statement:

a. within one month after there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or

b. if earlier, within twenty days after the secured party receives an authenticated demand from a debtor.

3. *Other collateral.* In cases not governed by subsection 1, within twenty days after a secured party receives an authenticated demand from a debtor, the secured party shall cause the secured party of record for a financing statement to send to the debtor a termination statement for the financing statement or file the termination statement in the filing office if:

a. except in the case of a financing statement covering accounts or chattel paper that has been sold or goods that are the subject of a consignment, there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value;

b. the financing statement covers accounts or chattel paper that has been sold but as to which the account debtor or other person obligated has discharged its obligation;

c. the financing statement covers goods that were the subject of a consignment to the debtor but are not in the debtor's possession; or

d. the debtor did not authorize the filing of the initial financing statement.

4. *Effect of filing termination statement.* Except as otherwise provided in section 554.9510, upon the filing of a termination statement with the filing office, the financing statement to which the termination statement relates ceases to be effective. Except as otherwise provided in section 554.9510, for purposes of section 554.9519, subsection 7, section 554.9522, subsection 1, and section 554.9523, subsection 3, the filing with the filing office of a termination statement relating to a financing statement that indicates that the debtor is a transmitting utility also causes the effectiveness of the financing statement to lapse.

2000 Acts, ch 1149, §84, 187
Remedies for secured party's failure to comply with Article; §554.9625
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9514 Assignment of powers of secured party of record.

1. *Assignment reflected on initial financing statement.* Except as otherwise provided in subsection 3, an initial financing statement may reflect an assignment of all of the secured party's power to authorize an amendment to the financing

statement by providing the name and mailing address of the assignee as the name and address of the secured party.

2. *Assignment of filed financing statement.* Except as otherwise provided in subsection 3, a secured party of record may assign of record all or part of its power to authorize an amendment to a financing statement by filing in the filing office an amendment of the financing statement which:

a. identifies, by its file number, the initial financing statement to which it relates;

b. provides the name of the assignor; and

c. provides the name and mailing address of the assignee.

3. *Assignment of record of mortgage.* An assignment of record of a security interest in a fixture covered by a record of a mortgage which is effective as a financing statement filed as a fixture filing under section 554.9502, subsection 3, may be made only by an assignment of record of the mortgage in the manner provided by law of this state other than this chapter.

2000 Acts, ch 1149, §85, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9515 Duration and effectiveness of financing statement — effect of lapsed financing statement.

1. *Five-year effectiveness.* Except as otherwise provided in subsections 2, 5, 6, and 7, a filed financing statement is effective for a period of five years after the date of filing.

2. *Public-finance or manufactured-home transaction.* Except as otherwise provided in subsections 5, 6, and 7, an initial financing statement filed in connection with a public-finance transaction or manufactured-home transaction is effective for a period of thirty years after the date of filing if it indicates that it is filed in connection with a public-finance transaction or manufactured-home transaction.

3. *Lapse and continuation of financing statement.* The effectiveness of a filed financing statement lapses on the expiration of the period of its effectiveness unless before the lapse a continuation statement is filed pursuant to subsection 4. Upon lapse, a financing statement ceases to be effective and any security interest or agricultural lien that was perfected by the financing statement becomes unperfected, unless the security interest is perfected otherwise. If the security interest or agricultural lien becomes unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the collateral for value.

4. *When continuation statement may be filed.* A continuation statement may be filed only within six months before the expiration of the five-year period specified in subsection 1 or the thirty-year period specified in subsection 2, whichever is applicable.

5. *Effect of filing continuation statement.* Except as otherwise provided in section 554.9510, upon timely filing of a continuation statement, the effectiveness of the initial financing statement continues for a period of five years commencing on the day on which the financing statement would have become ineffective in the absence of the filing. Upon the expiration of the five-year period, the financing statement lapses in the same manner as provided in subsection 3, unless, before the lapse, another continuation statement is filed pursuant to subsection 4. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the initial financing statement.

6. *Transmitting utility financing statement.* If a debtor is a transmitting utility and a filed financing statement so indicates, the financing statement is effective until a termination statement is filed.

7. *Record of mortgage as financing statement.* A record of a mortgage that is effective as a financing statement filed as a fixture filing under section 554.9502, subsection 3, remains effective as a financing statement filed as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real property.

2000 Acts, ch 1149, §86, 187
 Applicability of Article 9 to public-finance transactions, see §554.9109
 Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
 NEW section

554.9516 What constitutes filing — effectiveness of filing.

1. *What constitutes filing.* Except as otherwise provided in subsection 2, communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.

2. *Refusal to accept record — filing does not occur.* Filing does not occur with respect to a record that a filing office refuses to accept because:

- a. the record is not communicated by a method or medium of communication authorized by the filing office;
- b. an amount equal to or greater than the applicable filing fee is not tendered;
- c. the filing office is unable to index the record because:

- (1) in the case of an initial financing statement, the record does not provide a name for the debtor;

- (2) in the case of an amendment or correction statement, the record:

- (a) does not identify the initial financing statement as required by section 554.9512 or 554.9518, as applicable; or

- (b) identifies an initial financing statement whose effectiveness has lapsed under section 554.9515;

- (3) in the case of an initial financing statement

that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's last name; or

- (4) in the case of a record filed or recorded in the filing office described in section 554.9501, subsection 1, paragraph "a", the record does not provide a sufficient description of the real property to which it relates;

- d. in the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;

- e. in the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not:

- (1) provide a mailing address for the debtor;
- (2) indicate whether the debtor is an individual or an organization; or

- (3) if the financing statement indicates that the debtor is an organization, provide:

- (a) a type of organization for the debtor;
- (b) a jurisdiction of organization for the debtor; or

- (c) an organizational identification number for the debtor or indicate that the debtor has none;

- f. in the case of an assignment reflected in an initial financing statement under section 554.9514, subsection 1, or an amendment filed under section 554.9514, subsection 2, the record does not provide a name and mailing address for the assignee; or

- g. in the case of a continuation statement, the record is not filed within the six-month period prescribed by section 554.9515, subsection 4.

3. *Rules applicable to subsection 2.* For purposes of subsection 2:

- a. a record does not provide information if the filing office is unable to read or decipher the information; and

- b. a record that does not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by section 554.9512, 554.9514, or 554.9518, is an initial financing statement.

4. *Refusal to accept record — record effective as filed record.* A record that is communicated to the filing office with tender of the filing fee, but which the filing office refuses to accept for a reason other than one set forth in subsection 2, is effective as a filed record except as against a purchaser of the collateral which gives value in reasonable reliance upon the absence of the record from the files.

2000 Acts, ch 1149, §87, 187
 Acceptance and refusal of record, see also §554.9520
 Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
 NEW section

554.9517 Effect of indexing errors.

The failure of the filing office to index a record correctly does not affect the effectiveness of the filed record.

2000 Acts, ch 1149, §88, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9518 Claim concerning inaccurate or wrongfully filed record.

1. *Correction statement.* A person may file in the filing office a correction statement with respect to a record indexed there under the person's name if the person believes that the record is inaccurate or was wrongfully filed.

2. *Sufficiency of correction statement.* A correction statement must:

- a. identify the record to which it relates by:
 - (1) the file number assigned to the initial financing statement to which the record relates; and
 - (2) if the correction statement relates to a record filed or recorded in a filing office described in section 554.9501, subsection 1, paragraph "a", the date and time that the initial financing statement was filed or recorded and the information specified in section 554.9502, subsection 2;
- b. indicate that it is a correction statement; and
- c. provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.

3. *Record not affected by correction statement.* The filing of a correction statement does not affect the effectiveness of an initial financing statement or other filed record.

2000 Acts, ch 1149, §89, 187
Remedies for secured party's noncompliance with Article; §554.9625
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

B. DUTIES AND OPERATION OF FILING OFFICE

554.9519 Numbering, maintaining, and indexing records — communicating information provided in records.

1. *Filing office duties.* For each record filed in a filing office, the filing office shall:

- a. assign a unique number to the filed record;
- b. create a record that bears the number assigned to the filed record and the date and time of filing;
- c. maintain the filed record for public inspection; and
- d. index the filed record in accordance with

subsections 3, 4, and 5.

2. *File number.* A file number assigned after January 1, 2002, must include a digit that:

- a. is mathematically derived from or related to the other digits of the file number; and
- b. aids the filing office in determining whether a number communicated as the file number includes a single-digit or transpositional error.

3. *Indexing — general.* Except as otherwise provided in subsections 4 and 5, the filing office shall:

- a. index an initial financing statement according to the name of the debtor and index all filed records relating to the initial financing statement in a manner that associates with one another an initial financing statement and all filed records relating to the initial financing statement; and
- b. index a record that provides a name of a debtor which was not previously provided in the financing statement to which the record relates also according to the name that was not previously provided.

4. *Indexing — real-property-related financing statement.* If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, it must be filed for record and the filing office shall index it:

- a. under the names of the debtor and of each owner of record shown on the financing statement as if they were the mortgagors under a mortgage of the real property described; and
- b. to the extent that the law of this state provides for indexing of records of mortgages under the name of the mortgagee, under the name of the secured party as if the secured party were the mortgagee thereunder, or, if indexing is by description, as if the financing statement were a record of a mortgage of the real property described.

5. *Indexing — real-property-related assignment.* If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, the filing office shall index an assignment filed under section 554.9514, subsection 1, or an amendment filed under section 554.9514, subsection 2:

- a. under the name of the assignor as grantor; and
- b. to the extent that the law of this state provides for indexing a record of the assignment of a mortgage under the name of the assignee, under the name of the assignee.

6. *Retrieval and association capability.* The filing office shall maintain a capability:

- a. to retrieve a record by the name of the debtor; and

(1) if the filing office is described in section 554.9501, subsection 1, paragraph "a", by the file number assigned to the initial financing statement to which the record relates and the date and time that the record was filed or recorded; or

(2) if the filing office is described in section 554.9501, subsection 1, paragraph “b”, by the file number assigned to the initial financing statement to which the record relates; and

b. to associate and retrieve with one another an initial financing statement and each filed record relating to the initial financing statement.

7. *Removal of debtor’s name.* The filing office may not remove a debtor’s name from the index until one year after the effectiveness of a financing statement naming the debtor lapses under section 554.9515 with respect to all secured parties of record.

8. *Timeliness of filing office performance.* The filing office shall perform the acts required by subsections 1 through 5 at the time and in the manner prescribed by filing-office rule, but not later than two business days after the filing office receives the record in question.

2000 Acts, ch 1149, §90, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9520 Acceptance and refusal to accept record.

1. *Mandatory refusal to accept record.* A filing office shall refuse to accept a record for filing for a reason set forth in section 554.9516, subsection 2, and may refuse to accept a record for filing only for a reason set forth in section 554.9516, subsection 2.

2. *Communication concerning refusal.* If a filing office refuses to accept a record for filing, it shall communicate to the person that presented the record the fact of and reason for the refusal and the date and time the record would have been filed had the filing office accepted it. The communication must be made at the time and in the manner prescribed by filing-office rule but in no event more than two business days after the filing office receives the record.

3. *When filed financing statement effective.* A filed financing statement satisfying section 554.9502, subsections 1 and 2, is effective, even if the filing office is required to refuse to accept it for filing under subsection 1. However, section 554.9338 applies to a filed financing statement providing information described in section 554.9516, subsection 2, paragraph “e”, which is incorrect at the time the financing statement is filed.

4. *Separate application to multiple debtors.* If a record communicated to a filing office provides information that relates to more than one debtor, this part applies as to each debtor separately.

2000 Acts, ch 1149, §91, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9521 Uniform form of written financing statement and amendment.

1. *Initial financing statement form.* A filing office that accepts written records may not refuse to accept a written initial financing statement in a form and format approved by the secretary of state by rule adopted pursuant to chapter 17A except for a reason set forth in section 554.9516, subsection 2. The forms shall be consistent with those set forth in the final official text of the 1999 revisions to Article 9 of the Uniform Commercial Code promulgated by the American law institute and the national conference of commissioners on uniform state laws.

2. *Amendment form.* A filing office that accepts written records may not refuse to accept a written record in a form and format approved by the secretary of state by rule adopted pursuant to chapter 17A except for a reason set forth in section 554.9516, subsection 2. The forms shall be consistent with those set forth in the final official text of the 1999 revisions to Article 9 of the Uniform Commercial Code promulgated by the American law institute and the national conference of commissioners on uniform state laws.

2000 Acts, ch 1149, §92, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9522 Maintenance and destruction of records.

1. *Post-lapse maintenance and retrieval of information.* The filing office shall maintain a record of the information provided in a filed financing statement for at least one year after the effectiveness of the financing statement has lapsed under section 554.9515 with respect to all secured parties of record. The record must be retrievable by using the name of the debtor and:

a. if the record was filed or recorded in the filing office described in section 554.9501, subsection 1, paragraph “a”, by using the file number assigned to the initial financing statement to which the record relates and the date and time that the record was filed or recorded; or

b. if the record was filed in the filing office described in section 554.9501, subsection 1, paragraph “b”, by using the file number assigned to the initial financing statement to which the record relates.

2. *Destruction of written records.* Except to the extent that a statute governing disposition of public records provides otherwise, the filing office immediately may destroy any written record evidencing a financing statement. However, if the filing office destroys a written record, it shall maintain another record of the financing statement which complies with subsection 1.

2000 Acts, ch 1149, §93, 187
 Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
 NEW section

554.9523 Information from filing office — sale or license of records.

1. *Acknowledgment of filing written record.* If a person that files a written record requests an acknowledgment of the filing, the filing office shall send to the person an image of the record showing the number assigned to the record pursuant to section 554.9519, subsection 1, paragraph “a”, and the date and time of the filing of the record. However, if the person furnishes a copy of the record to the filing office, the filing office may instead:

a. note upon the copy the number assigned to the record pursuant to section 554.9519, subsection 1, paragraph “a”, and the date and time of the filing of the record; and

b. send the copy to the person.

2. *Acknowledgment of filing other record.* If a person files a record other than a written record, the filing office shall communicate to the person an acknowledgment that provides:

a. the information in the record;

b. the number assigned to the record pursuant to section 554.9519, subsection 1, paragraph “a”; and

c. the date and time of the filing of the record.

3. *Communication of requested information.* The filing office shall communicate or otherwise make available in a record the following information to any person that requests it:

a. whether there is on file on a date and time specified by the filing office, but not a date earlier than three business days before the filing office receives the request, any financing statement that:

(1) designates a particular debtor or, if the request so states, designates a particular debtor at the address specified in the request;

(2) has not lapsed under section 554.9515 with respect to all secured parties of record; and

(3) if the request so states, has lapsed under section 554.9515 and a record of which is maintained by the filing office under section 554.9522, subsection 1;

b. the date and time of filing of each financing statement; and

c. the information provided in each financing statement.

4. *Medium for communicating information.* In complying with its duty under subsection 3, the filing office may communicate information in any medium. However, if requested, the filing office shall communicate information by issuing a record that can be admitted into evidence in the courts of this state without extrinsic evidence of its authenticity.

5. *Timeliness of filing office performance.* The filing office shall perform the acts required by subsections 1 through 4 at the time and in the

manner prescribed by filing-office rule, but not later than two business days after the filing office receives the request.

6. *Public availability of records.* At least weekly, the filing office shall offer to sell or license to the public on a nonexclusive basis, in bulk, copies of all records filed in it under this part, in every medium from time to time available to the filing office, as provided in chapter 22.

2000 Acts, ch 1149, §94, 187
 Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
 NEW section

554.9524 Delay by filing office.

Delay by the filing office beyond a time limit prescribed by this part is excused if:

1. the delay is caused by interruption of communication or computer facilities, war, emergency conditions, failure of equipment, or other circumstances beyond control of the filing office; and

2. the filing office exercises reasonable diligence under the circumstances.

2000 Acts, ch 1149, §95, 187
 Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
 NEW section

554.9525 Fees.

1. *Initial financing statement or other record — general rule.* Except as otherwise provided in subsection 4, fees for services rendered by the filing office under this part must be set by rules adopted by the secretary of state’s office for services for that office. The rule must set the fees for filing and indexing a record under this part on the following basis:

a. if a record presented for filing is communicated to the filing office in writing and consists of more than two pages, the fee for filing and indexing the record must be at least twice the amount of the fee for a record communicated in writing that consists of one or two pages; and

b. if the record is communicated by another medium authorized by the secretary of state’s office, the fee must be no more than half the amount of the fee for a record communicated in writing that consists of one or two pages.

2. *Number of names.* The number of names required to be indexed does not affect the amount of the fee in subsection 1.

3. *Response to information request.* A rule adopted pursuant to subsection 1 must set the fee for responding to a request for information from the filing office, including for communicating whether there is on file any financing statement naming a particular debtor. A fee for responding to a request communicated in writing must be not less than twice the amount of the fee for responding to a request communicated by another medium authorized by the office of secretary of state or the board of supervisors for the filing office where its filing office is located.

4. *Record of mortgage.* This section does not require a fee with respect to a record of a mortgage which is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut under section 554.9502, subsection 3. However, the recording and satisfaction fees that otherwise would be applicable to the record of the mortgage apply.

2000 Acts, ch 1149, §96, 187; 2001 Acts, ch 176, §75
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9526 Filing-office rules.

1. *Adoption of filing-office rules.* The office of secretary of state shall adopt and publish rules to implement this Article. The filing-office rules must be:

- a. consistent with this Article; and
- b. adopted and published in accordance with chapter 17A.

2. *Harmonization of rules.* To keep the filing-office rules and practices of the filing office in harmony with the rules and practices of filing offices in other jurisdictions that enact substantially this part, and to keep the technology used by the filing office compatible with the technology used by filing offices in other jurisdictions that enact substantially this part, the office of secretary of state, so far as is consistent with the purposes, policies, and provisions of this Article, in adopting, amending, and repealing filing-office rules, shall:

- a. consult with filing offices in other jurisdictions that enact substantially this part; and
- b. consult the most recent version of the Model Rules promulgated by the International Association of Corporate Administrators or any successor organization; and
- c. take into consideration the rules and practices of, and the technology used by, filing offices in other jurisdictions that enact substantially this part.

2000 Acts, ch 1149, §97, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9527 Duty to report.

The office of secretary of state shall report annually on or before December 31 to the governor on the operation of the filing office. The report must contain a statement of the extent to which:

1. the filing-office rules are not in harmony with the rules of filing offices in other jurisdictions that enact substantially this part and the reasons for these variations; and
2. the filing-office rules are not in harmony with the most recent version of the Model Rules promulgated by the International Association of Corporate Administrators, or any successor organization, and the reasons for these variations.

2000 Acts, ch 1149, §98, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

PART 6

DEFAULT

A. DEFAULT AND ENFORCEMENT OF SECURITY INTEREST

554.9601 Rights after default — judicial enforcement — consignor or buyer of accounts, chattel paper, payment intangibles, or promissory notes.

1. *Rights of secured party after default.* After default, a secured party has the rights provided in this part and, except as otherwise provided in section 554.9602, those provided by agreement of the parties. A secured party:

- a. may reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure; and
- b. if the collateral is documents, may proceed either as to the documents or as to the goods they cover.

2. *Rights and duties of secured party in possession or control.* A secured party in possession of collateral or control of collateral under section 554.9104, 554.9105, 554.9106, or 554.9107 has the rights and duties provided in section 554.9207.

3. *Rights cumulative — simultaneous exercise.* The rights under subsections 1 and 2 are cumulative and may be exercised simultaneously.

4. *Rights of debtor and obligor.* Except as otherwise provided in subsection 7 and section 554.9605, after default, a debtor and an obligor have the rights provided in this part and by agreement of the parties.

5. *Lien of levy after judgment.* If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

- a. the date of perfection of the security interest or agricultural lien in the collateral;
- b. the date of filing a financing statement covering the collateral; or
- c. any date specified in a statute under which the agricultural lien was created.

6. *Execution sale.* A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this Article.

7. *Consignor or buyer of certain rights to payment.* Except as otherwise provided in section 554.9607, subsection 3, this part imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles,

or promissory notes.

2000 Acts, ch 1149, §99, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9602 Waiver and variance of rights and duties.

Except as otherwise provided in section 554.9624, to the extent that they give rights to a debtor or obligor and impose duties on a secured party, the debtor or obligor may not waive or vary the rules stated in the following listed sections:

1. section 554.9207, subsection 2, paragraph “d”, subparagraph (3), which deals with use and operation of the collateral by the secured party;
2. section 554.9210, which deals with requests for an accounting and requests concerning a list of collateral and statement of account;
3. section 554.9607, subsection 3, which deals with collection and enforcement of collateral;
4. section 554.9608, subsection 1, and section 554.9615, subsection 3, to the extent that they deal with application or payment of noncash proceeds of collection, enforcement, or disposition;
5. section 554.9608, subsection 1, and section 554.9615, subsection 4, to the extent that they require accounting for or payment of surplus proceeds of collateral;
6. section 554.9609 to the extent that it imposes upon a secured party that takes possession of collateral without judicial process the duty to do so without breach of the peace;
7. section 554.9610, subsection 2, and sections 554.9611, 554.9613, and 554.9614, which deal with disposition of collateral;
8. section 554.9615, subsection 6, which deals with calculation of a deficiency or surplus when a disposition is made to the secured party, a person related to the secured party, or a secondary obligor;
9. section 554.9616, which deals with explanation of the calculation of a surplus or deficiency;
10. sections 554.9620, 554.9621, and 554.9622, which deal with acceptance of collateral in satisfaction of obligation;
11. section 554.9623, which deals with redemption of collateral;
12. section 554.9624, which deals with permissible waivers; and
13. sections 554.9625 and 554.9626, which deal with the secured party’s liability for failure to comply with this Article.

2000 Acts, ch 1149, §100, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9603 Agreement on standards concerning rights and duties.

1. *Agreed standards.* The parties may determine by agreement the standards measuring the fulfillment of the rights of a debtor or obligor and

the duties of a secured party under a rule stated in section 554.9602 if the standards are not manifestly unreasonable.

2. *Agreed standards inapplicable to breach of peace.* Subsection 1 does not apply to the duty under section 554.9609 to refrain from breaching the peace.

2000 Acts, ch 1149, §101, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9604 Procedure if security agreement covers real property or fixtures.

1. *Enforcement — personal and real property.* If a security agreement covers both personal and real property, a secured party may proceed:

- a. under this part as to the personal property without prejudicing any rights with respect to the real property; or
- b. as to both the personal property and the real property in accordance with the rights with respect to the real property, in which case the other provisions of this part do not apply.

2. *Enforcement — fixtures.* Subject to subsection 3, if a security agreement covers goods that are or become fixtures, a secured party may proceed:

- a. under this part; or
- b. in accordance with the rights with respect to real property, in which case the other provisions of this part do not apply.

3. *Removal of fixtures.* Subject to the other provisions of this part, if a secured party holding a security interest in fixtures has priority over all owners and encumbrancers of the real property, the secured party, after default, may remove the collateral from the real property.

4. *Injury caused by removal.* A secured party that removes collateral shall promptly reimburse any encumbrancer or owner of the real property, other than the debtor, for the cost of repair of any physical injury caused by the removal. The secured party need not reimburse the encumbrancer or owner for any diminution in value of the real property caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

2000 Acts, ch 1149, §102, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9605 Unknown debtor or secondary obligor.

A secured party does not owe a duty based on its status as secured party:

1. to a person that is a debtor or obligor, unless the secured party knows:
 - a. that the person is a debtor or obligor;
 - b. the identity of the person; and

c. how to communicate with the person; or
 2. to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

- a. that the person is a debtor; and
- b. the identity of the person.

2000 Acts, ch 1149, §103, 187
 Liability limitations; see §554.9628
 Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
 NEW section

554.9606 Time of default for agricultural lien.

For purposes of this part, a default occurs in connection with an agricultural lien at the time the secured party becomes entitled to enforce the lien in accordance with the statute under which it was created.

2000 Acts, ch 1149, §104, 187
 Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
 NEW section

554.9607 Collection and enforcement by secured party.

1. *Collection and enforcement generally.* If so agreed, and in any event after default, a secured party:

a. may notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party;

b. may take any proceeds to which the secured party is entitled under section 554.9315;

c. may enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor, and with respect to any property that secures the obligations of the account debtor or other person obligated on the collateral;

d. if it holds a security interest in a deposit account perfected by control under section 554.9104, subsection 1, paragraph “a”, may apply the balance of the deposit account to the obligation secured by the deposit account; and

e. if it holds a security interest in a deposit account perfected by control under section 554.9104, subsection 1, paragraph “b” or “c”, may instruct the bank to pay the balance of the deposit account to or for the benefit of the secured party.

2. *Nonjudicial enforcement of mortgage.* If necessary to enable a secured party to exercise under subsection 1, paragraph “c”, the right of a debtor to enforce a mortgage nonjudicially, the secured party may record in the office in which a record of the mortgage is recorded:

a. a copy of the security agreement that creates or provides for a security interest in the obligation secured by the mortgage; and

b. the secured party’s sworn affidavit in recordable form stating that:

- (1) a default has occurred; and
- (2) the secured party is entitled to enforce the mortgage nonjudicially.

3. *Commercially reasonable collection and enforcement.* A secured party shall proceed in a commercially reasonable manner if the secured party:

a. undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral; and

b. is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor.

4. *Expenses of collection and enforcement.* A secured party may deduct from the collections made pursuant to subsection 3 reasonable expenses of collection and enforcement, including reasonable attorney’s fees and legal expenses incurred by the secured party.

5. *Duties to secured party not affected.* This section does not determine whether an account debtor, bank, or other person obligated on collateral owes a duty to a secured party.

2000 Acts, ch 1149, §105, 187
 Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
 NEW section

554.9608 Application of proceeds of collection or enforcement — liability for deficiency and right to surplus.

1. *Application of proceeds, surplus, and deficiency if obligation secured.* If a security interest or agricultural lien secures payment or performance of an obligation, the following rules apply:

a. a secured party shall apply or pay over for application the cash proceeds of collection or enforcement under section 554.9607 in the following order to:

(1) the reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorney’s fees and legal expenses incurred by the secured party;

(2) the satisfaction of obligations secured by the security interest or agricultural lien under which the collection or enforcement is made; and

(3) the satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured party receives an authenticated demand for proceeds before distribution of the proceeds is completed.

b. if requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder complies, the secured party need not comply with the holder’s demand under paragraph “a”, subparagraph (3).

c. a secured party need not apply or pay over for application noncash proceeds of collection and enforcement under section 554.9607 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

d. a secured party shall account to and pay a debtor for any surplus, and the obligor is liable for any deficiency.

2. *No surplus or deficiency in sales of certain rights to payment.* If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes, the debtor is not entitled to any surplus, and the obligor is not liable for any deficiency.

2000 Acts, ch 1149, §106, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9609 Secured party's right to take possession after default.

1. *Possession — rendering equipment unusable — disposition on debtor's premises.* After default, a secured party:

- a. may take possession of the collateral; and
- b. without removal, may render equipment unusable and dispose of collateral on a debtor's premises under section 554.9610.

2. *Judicial and nonjudicial process.* A secured party may proceed under subsection 1:

- a. pursuant to judicial process; or
- b. without judicial process, if it proceeds without breach of the peace.

3. *Assembly of collateral.* If so agreed, and in any event after default, a secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties.

2000 Acts, ch 1149, §107, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9610 Disposition of collateral after default.

1. *Disposition after default.* After default, a secured party may sell, lease, license, or otherwise dispose of any or all of the collateral in its present condition or following any commercially reasonable preparation or processing.

2. *Commercially reasonable disposition.* Every aspect of a disposition of collateral, including the method, manner, time, place, and other terms, must be commercially reasonable. If commercially reasonable, a secured party may dispose of collateral by public or private proceedings, by one or more contracts, as a unit or in parcels, and at any time and place and on any terms.

3. *Purchase by secured party.* A secured party may purchase collateral:

- a. at a public disposition; or
- b. at a private disposition only if the collateral is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations.

4. *Warranties on disposition.* A contract for sale, lease, license, or other disposition includes the warranties relating to title, possession, quiet enjoyment, and the like which by operation of law accompany a voluntary disposition of property of the kind subject to the contract.

5. *Disclaimer of warranties.* A secured party may disclaim or modify warranties under subsection 4:

- a. in a manner that would be effective to disclaim or modify the warranties in a voluntary disposition of property of the kind subject to the contract of disposition; or
- b. by communicating to the purchaser a record evidencing the contract for disposition and including an express disclaimer or modification of the warranties.

6. *Record sufficient to disclaim warranties.* A record is sufficient to disclaim warranties under subsection 5 if it indicates "There is no warranty relating to title, possession, quiet enjoyment, or the like in this disposition" or uses words of similar import.

2000 Acts, ch 1149, §108, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9611 Notification before disposition of collateral.

1. *Notification date.* In this section, "notification date" means the earlier of the dates on which:

- a. a secured party sends to the debtor and any secondary obligor an authenticated notification of disposition; or
- b. the debtor and any secondary obligor waive the right to notification.

2. *Notification of disposition required.* Except as otherwise provided in subsection 4, a secured party that disposes of collateral under section 554.9610 shall send to the persons specified in subsection 3 a reasonable authenticated notification of disposition.

3. *Persons to be notified.* To comply with subsection 2, the secured party shall send an authenticated notification of disposition to:

- a. the debtor;
- b. any secondary obligor; and
- c. if the collateral is other than consumer goods:

(1) any other person from which the secured party has received, before the notification date, an authenticated notification of a claim of an interest in the collateral;

(2) any other secured party or lienholder that, ten days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

- (a) identified the collateral;
- (b) was indexed under the debtor’s name as of that date; and

(c) was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date; and

(3) any other secured party that, ten days before the notification date, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in section 554.9311, subsection 1.

4. *Subsection 2 inapplicable — perishable collateral — recognized market.* Subsection 2 does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.

5. *Compliance with subsection 3, paragraph “c”, subparagraph (2).* A secured party complies with the requirement for notification prescribed by subsection 3, paragraph “c”, subparagraph (2), if:

a. not later than twenty days or earlier than thirty days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor’s name in the office indicated in subsection 3, paragraph “c”, subparagraph (2); and

b. before the notification date, the secured party:

(1) did not receive a response to the request for information; or

(2) received a response to the request for information and sent an authenticated notification of disposition to each secured party or other lienholder named in that response whose financing statement covered the collateral.

2000 Acts, ch 1149, §109, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9612 Timeliness of notification before disposition of collateral.

1. *Reasonable time is question of fact.* Except as otherwise provided in subsection 2, whether a notification is sent within a reasonable time is a question of fact.

2. *Ten-day period sufficient in nonconsumer transaction.* In a transaction other than a consumer transaction, a notification of disposition sent after default and ten days or more before the earliest time of disposition set forth in the notification is sent within a reasonable time before the disposition.

2000 Acts, ch 1149, §110, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9613 Contents and form of notification before disposition of collateral — general.

Except in a consumer-goods transaction, the following rules apply:

1. The contents of a notification of disposition are sufficient if the notification:

- a. describes the debtor and the secured party;
- b. describes the collateral that is the subject of the intended disposition;
- c. states the method of intended disposition;
- d. states that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and
- e. states the time and place of a public disposition or the time after which any other disposition is to be made.

2. Whether the contents of a notification that lacks any of the information specified in subsection 1 are nevertheless sufficient is a question of fact.

3. The contents of a notification providing substantially the information specified in subsection 1 are sufficient, even if the notification includes:

- a. information not specified by that subsection; or
- b. minor errors that are not seriously misleading.

4. A particular phrasing of the notification is not required.

5. The following form of notification and the form appearing in section 554.9614, subsection 3, when completed, each provides sufficient information:

NOTIFICATION OF DISPOSITION
OF COLLATERAL

To: [name of debtor, obligor, or other person to which the notification is sent]

From: [name, address, and telephone number of secured party]

Name of Debtor(s): [include only if debtor(s) are not an addressee]

[for a public disposition:]

We will sell [or lease or license, as applicable] the [describe collateral] [to the highest qualified bidder] in public as follows:

- Day and Date:
- Time:
- Place:

[for a private disposition:]

We will sell [or lease or license, as applicable] the [describe collateral] privately sometime after [day and date].

You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to sell [or lease or license, as applicable] [for a charge of dollars]. You may request an accounting by calling us at [telephone number].

2000 Acts, ch 1149, §111, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9614 Contents and form of notification before disposition of collateral — consumer-goods transaction.

In a consumer-goods transaction, the following rules apply:

1. A notification of disposition must provide the following information:

a. the information specified in section 554.9613, subsection 1;

b. a description of any liability for a deficiency of the person to which the notification is sent;

c. a telephone number from which the amount that must be paid to the secured party to redeem the collateral under section 554.9623 is available; and

d. a telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available.

2. A particular phrasing of the notification is not required.

3. The following form of notification, when completed, provides sufficient information:

[name and address of secured party]

[date]

NOTICE OF OUR PLAN TO SELL PROPERTY

[name and address of any obligor who is also a debtor]

Subject: [identification of transaction]

We have your [describe collateral], because you broke promises in our agreement.

[for a public disposition:]

We will sell [describe collateral] at public sale. A sale could include a lease or license. The sale will be held as follows:

Date:

Time:

Place:

You may attend the sale and bring bidders if you want.

[for a private disposition:]

We will sell [describe collateral] at private sale sometime after [date]. A sale could include a lease or license.

The money that we get from the sale (after paying our costs) will reduce the amount you owe. If we get less money than you owe, you [will or will not, as applicable] still owe us the difference. If we get more money than you owe, you will get the extra money, unless we must pay it to someone else.

You can get the property back at any time before we sell it by paying us the full amount you owe (not just the past due payments), including our expenses. To learn the exact amount you must pay, call us at [telephone number].

If you want us to explain to you in writing how we have figured the amount that you owe us, you may call us at [telephone number] [or write us at

[secured party's address]] and request a written explanation. [We will charge you for the explanation if we sent you another written explanation of the amount you owe us within the last six months.]

If you need more information about the sale call us at [telephone number] [or write us at [secured party's address]].

We are sending this notice to the following other people who have an interest in [describe collateral] or who owe money under your agreement: [names of all other debtors and obligors, if any]

4. A notification in the form of subsection 3 is sufficient, even if additional information appears at the end of the form.

5. A notification in the form of subsection 3 is sufficient, even if it includes errors in information not required by subsection 1, unless the error is misleading with respect to rights arising under this Article.

6. If a notification under this section is not in the form of subsection 3, law other than this Article determines the effect of including information not required by subsection 1.

2000 Acts, ch 1149, §112, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9615 Application of proceeds of disposition — liability for deficiency and right to surplus.

1. *Application of proceeds.* A secured party shall apply or pay over for application the cash proceeds of disposition under section 554.9610 in the following order to:

a. the reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing, and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

b. the satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made;

c. the satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if:

(1) the secured party receives from the holder of the subordinate security interest or other lien an authenticated demand for proceeds before distribution of the proceeds is completed; and

(2) in a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor; and

d. a secured party that is a consignor of the collateral if the secured party receives from the consignor an authenticated demand for proceeds

before distribution of the proceeds is completed.

2. *Proof of subordinate interest.* If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's demand under subsection 1, paragraph "c".

3. *Application of noncash proceeds.* A secured party need not apply or pay over for application noncash proceeds of disposition under section 554.9610 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

4. *Surplus or deficiency if obligation secured.* If the security interest under which a disposition is made secures payment or performance of an obligation, after making the payments and applications required by subsection 1 and permitted by subsection 3:

a. unless subsection 1, paragraph "d", requires the secured party to apply or pay over cash proceeds to a consignor, the secured party shall account to and pay a debtor for any surplus; and

b. the obligor is liable for any deficiency.

5. *No surplus or deficiency in sales of certain rights to payment.* If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes:

a. the debtor is not entitled to any surplus; and

b. the obligor is not liable for any deficiency.

6. *Calculation of surplus or deficiency in disposition to person related to secured party.* The surplus or deficiency following a disposition is calculated based on the amount of proceeds that would have been realized in a disposition complying with this part to a transferee other than the secured party, a person related to the secured party, or a secondary obligor if:

a. the transferee in the disposition is the secured party, a person related to the secured party, or a secondary obligor; and

b. the amount of proceeds of the disposition is significantly below the range of proceeds that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

7. *Cash proceeds received by junior secured party.* A secured party that receives cash proceeds of a disposition in good faith and without knowledge that the receipt violates the rights of the holder of a security interest or other lien that is not subordinate to the security interest or agricultural lien under which the disposition is made:

a. takes the cash proceeds free of the security interest or other lien;

b. is not obligated to apply the proceeds of the disposition to the satisfaction of obligations secured by the security interest or other lien; and

c. is not obligated to account to or pay the hold-

er of the security interest or other lien for any surplus.

2000 Acts, ch 1149, §113, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9616 Explanation of calculation of surplus or deficiency.

1. *Definitions.* In this section:

a. "*Explanation*" means a writing that:

(1) states the amount of the surplus or deficiency;

(2) provides an explanation in accordance with subsection 3 of how the secured party calculated the surplus or deficiency;

(3) states, if applicable, that future debits, credits, charges, including additional credit service charges or interest, rebates, and expenses may affect the amount of the surplus or deficiency; and

(4) provides a telephone number or mailing address from which additional information concerning the transaction is available.

b. "*Request*" means a record:

(1) authenticated by a debtor or consumer obligor;

(2) requesting that the recipient provide an explanation; and

(3) sent after disposition of the collateral under section 554.9610.

2. *Explanation of calculation.* In a consumer-goods transaction in which the debtor is entitled to a surplus or a consumer obligor is liable for a deficiency under section 554.9615, the secured party shall:

a. send an explanation to the debtor or consumer obligor, as applicable, after the disposition and:

(1) before or when the secured party accounts to the debtor and pays any surplus or first makes written demand on the consumer obligor after the disposition for payment of the deficiency; and

(2) within fourteen days after receipt of a request; or

b. in the case of a consumer obligor who is liable for a deficiency, within fourteen days after receipt of a request, send to the consumer obligor a record waiving the secured party's right to a deficiency.

3. *Required information.* To comply with subsection 1, paragraph "a", subparagraph (2), a writing must provide the following information in the following order:

a. the aggregate amount of obligations secured by the security interest under which the disposition was made, and, if the amount reflects a rebate of unearned interest or credit service charge, an indication of that fact, calculated as of a specified date:

(1) if the secured party takes or receives possession of the collateral after default, not more

than thirty-five days before the secured party takes or receives possession; or

(2) if the secured party takes or receives possession of the collateral before default or does not take possession of the collateral, not more than thirty-five days before the disposition;

- b. the amount of proceeds of the disposition;
- c. the aggregate amount of the obligations after deducting the amount of proceeds;
- d. the amount, in the aggregate or by type, and types of expenses, including expenses of retaking, holding, preparing for disposition, processing, and disposing of the collateral, and attorney's fees secured by the collateral which are known to the secured party and relate to the current disposition;
- e. the amount, in the aggregate or by type, and types of credits, including rebates of interest or credit service charges, to which the obligor is known to be entitled and which are not reflected in the amount in paragraph "a"; and
- f. the amount of the surplus or deficiency.

4. *Substantial compliance.* A particular phrasing of the explanation is not required. An explanation complying substantially with the requirements of subsection 1 is sufficient, even if it includes minor errors that are not seriously misleading.

5. *Charges for responses.* A debtor or consumer obligor is entitled without charge to one response to a request under this section during any six-month period in which the secured party did not send to the debtor or consumer obligor an explanation pursuant to subsection 2, paragraph "a". The secured party may require payment of a charge not exceeding twenty-five dollars for each additional response.

2000 Acts, ch 1149, §114, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9617 Rights of transferee of collateral.

1. *Effects of disposition.* A secured party's disposition of collateral after default:

- a. transfers to a transferee for value all of the debtor's rights in the collateral;
- b. discharges the security interest under which the disposition is made; and
- c. discharges any subordinate security interest or other subordinate lien.

2. *Rights of good-faith transferee.* A transferee that acts in good faith takes free of the rights and interests described in subsection 1, even if the secured party fails to comply with this Article or the requirements of any judicial proceeding.

3. *Rights of other transferee.* If a transferee does not take free of the rights and interests described in subsection 1, the transferee takes the collateral subject to:

- a. the debtor's rights in the collateral;

b. the security interest or agricultural lien under which the disposition is made; and

c. any other security interest or other lien.

2000 Acts, ch 1149, §115, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9618 Rights and duties of certain secondary obligors.

1. *Rights and duties of secondary obligor.* A secondary obligor acquires the rights and becomes obligated to perform the duties of the secured party after the secondary obligor:

- a. receives an assignment of a secured obligation from the secured party;
- b. receives a transfer of collateral from the secured party and agrees to accept the rights and assume the duties of the secured party; or
- c. is subrogated to the rights of a secured party with respect to collateral.

2. *Effect of assignment, transfer, or subrogation.* An assignment, transfer, or subrogation described in subsection 1:

- a. is not a disposition of collateral under section 554.9610; and
- b. relieves the secured party of further duties under this Article.

2000 Acts, ch 1149, §116, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9619 Transfer of record or legal title.

1. *Transfer statement.* In this section, "transfer statement" means a record authenticated by a secured party stating:

- a. that the debtor has defaulted in connection with an obligation secured by specified collateral;
- b. that the secured party has exercised its post-default remedies with respect to the collateral;

c. that, by reason of the exercise, a transferee has acquired the rights of the debtor in the collateral; and

d. the name and mailing address of the secured party, debtor, and transferee.

2. *Effect of transfer statement.* A transfer statement entitles the transferee to the transfer of record of all rights of the debtor in the collateral specified in the statement in any official filing, recording, registration, or certificate-of-title system covering the collateral. If a transfer statement is presented with the applicable fee and request form to the official or office responsible for maintaining the system, the official or office shall:

- a. accept the transfer statement;
- b. promptly amend its records to reflect the transfer; and
- c. if applicable, issue a new appropriate certificate of title in the name of the transferee.

3. *Transfer not a disposition — no relief of secured party's duties.* A transfer of the record or legal title to collateral to a secured party under subsection 2 or otherwise is not of itself a disposition of collateral under this Article and does not of itself relieve the secured party of its duties under this Article.

2000 Acts, ch 1149, §117, 187
Transfer of title or interest in vehicles, §321.45 – 321.52A
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9620 Acceptance of collateral in full or partial satisfaction of obligation — compulsory disposition of collateral.

1. *Conditions to acceptance in satisfaction.* Except as otherwise provided in subsection 7, a secured party may accept collateral in full or partial satisfaction of the obligation it secures only if:

a. the debtor consents to the acceptance under subsection 3;

b. the secured party does not receive, within the time set forth in subsection 4, a notification of objection to the proposal authenticated by:

(1) a person to which the secured party was required to send a proposal under section 554.9621; or

(2) any other person, other than the debtor, holding an interest in the collateral subordinate to the security interest that is the subject of the proposal;

c. if the collateral is consumer goods, the collateral is not in the possession of the debtor when the debtor consents to the acceptance; and

d. subsection 5 does not require the secured party to dispose of the collateral or the debtor waives the requirement pursuant to section 554.9624.

2. *Purported acceptance ineffective.* A purported or apparent acceptance of collateral under this section is ineffective unless:

a. the secured party consents to the acceptance in an authenticated record or sends a proposal to the debtor; and

b. the conditions of subsection 1 are met.

3. *Debtor's consent.* For purposes of this section:

a. a debtor consents to an acceptance of collateral in partial satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default; and

b. a debtor consents to an acceptance of collateral in full satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default or the secured party:

(1) sends to the debtor after default a proposal that is unconditional or subject only to a condition that collateral not in the possession of the secured party be preserved or maintained;

(2) in the proposal, proposes to accept collateral in full satisfaction of the obligation it secures; and

(3) does not receive a notification of objection authenticated by the debtor within twenty days after the proposal is sent.

4. *Effectiveness of notification.* To be effective under subsection 1, paragraph "b", a notification of objection must be received by the secured party:

a. in the case of a person to which the proposal was sent pursuant to section 554.9621, within twenty days after notification was sent to that person; and

b. in other cases:

(1) within twenty days after the last notification was sent pursuant to section 554.9621; or

(2) if a notification was not sent, before the debtor consents to the acceptance under subsection 3.

5. *Mandatory disposition of consumer goods.* A secured party that has taken possession of collateral shall dispose of the collateral pursuant to section 554.9610 within the time specified in subsection 6 if:

a. sixty percent of the cash price has been paid in the case of a purchase-money security interest in consumer goods; or

b. sixty percent of the principal amount of the obligation secured has been paid in the case of a non-purchase-money security interest in consumer goods.

6. *Compliance with mandatory disposition requirement.* To comply with subsection 5, the secured party shall dispose of the collateral:

a. within ninety days after taking possession; or

b. within any longer period to which the debtor and all secondary obligors have agreed in an agreement to that effect entered into and authenticated after default.

7. *No partial satisfaction in consumer transaction.* In a consumer transaction, a secured party may not accept collateral in partial satisfaction of the obligation it secures.

2000 Acts, ch 1149, §118, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9621 Notification of proposal to accept collateral.

1. *Persons to which proposal to be sent.* A secured party that desires to accept collateral in full or partial satisfaction of the obligation it secures shall send its proposal to:

a. any person from which the secured party has received, before the debtor consented to the acceptance, an authenticated notification of a claim of an interest in the collateral;

b. any other secured party or lienholder that, ten days before the debtor consented to the accep-

tance, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

- (1) identified the collateral;
- (2) was indexed under the debtor's name as of that date; and
- (3) was filed in the office or offices in which to file a financing statement against the debtor covering the collateral as of that date; and

c. any other secured party that, ten days before the debtor consented to the acceptance, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in section 554.9311, subsection 1.

2. *Proposal to be sent to secondary obligor in partial satisfaction.* A secured party that desires to accept collateral in partial satisfaction of the obligation it secures shall send its proposal to any secondary obligor in addition to the persons described in subsection 1.

2000 Acts, ch 1149, §119, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9622 Effect of acceptance of collateral.

1. *Effect of acceptance.* A secured party's acceptance of collateral in full or partial satisfaction of the obligation it secures:

- a. discharges the obligation to the extent consented to by the debtor;
- b. transfers to the secured party all of a debtor's rights in the collateral;
- c. discharges the security interest or agricultural lien that is the subject of the debtor's consent and any subordinate security interest or other subordinate lien; and
- d. terminates any other subordinate interest.

2. *Discharge of subordinate interest notwithstanding noncompliance.* A subordinate interest is discharged or terminated under subsection 1, even if the secured party fails to comply with this Article.

2000 Acts, ch 1149, §120, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9623 Right to redeem collateral.

1. *Persons that may redeem.* A debtor, any secondary obligor, or any other secured party or lienholder may redeem collateral.

2. *Requirements for redemption.* To redeem collateral, a person shall tender:

- a. fulfillment of all obligations secured by the collateral; and
- b. the reasonable expenses and attorney's fees described in section 554.9615, subsection 1, paragraph "a".

3. *When redemption may occur.* A redemption may occur at any time before a secured party:

- a. has collected collateral under section 554.9607;

b. has disposed of collateral or entered into a contract for its disposition under section 554.9610; or

c. has accepted collateral in full or partial satisfaction of the obligation it secures under section 554.9622.

2000 Acts, ch 1149, §121, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9624 Waiver.

1. *Waiver of disposition notification.* A debtor or secondary obligor may waive the right to notification of disposition of collateral under section 554.9611 only by an agreement to that effect entered into and authenticated after default.

2. *Waiver of mandatory disposition.* A debtor may waive the right to require disposition of collateral under section 554.9620, subsection 5, only by an agreement to that effect entered into and authenticated after default.

3. *Waiver of redemption right.* Except in a consumer-goods transaction, a debtor or secondary obligor may waive the right to redeem collateral under section 554.9623 only by an agreement to that effect entered into and authenticated after default.

2000 Acts, ch 1149, §122, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

B. NONCOMPLIANCE WITH ARTICLE

554.9625 Remedies for secured party's failure to comply with Article.

1. *Judicial orders concerning noncompliance.* If it is established that a secured party is not proceeding in accordance with this Article, a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.

2. *Damages for noncompliance.* Subject to subsections 3, 4, and 6, a person is liable for damages in the amount of any loss caused by a failure to comply with this Article. Loss caused by a failure to comply may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing.

3. *Persons entitled to recover damages — statutory damages in consumer-goods transaction.* Except as otherwise provided in section 554.9628:

a. a person that, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover damages under subsection 2 for its loss; and

b. if the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with this part may recover for that failure in any event an amount not less than the credit service charge plus ten percent of the principal amount of the ob-

ligation or the time-price differential plus ten percent of the cash price.

4. *Recovery when deficiency eliminated or reduced.* A debtor whose deficiency is eliminated under section 554.9626 may recover damages for the loss of any surplus. However, a debtor or secondary obligor whose deficiency is eliminated or reduced under section 554.9626 may not otherwise recover under subsection 2 for noncompliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance.

5. *Statutory damages — noncompliance with specified provisions.* In addition to any damages recoverable under subsection 2, the debtor, consumer obligor, or person named as a debtor in a filed record, as applicable, may recover five hundred dollars in each case from a person that:

- a. fails to comply with section 554.9208;
- b. fails to comply with section 554.9209;
- c. files a record that the person is not entitled to file under section 554.9509, subsection 1;
- d. fails to cause the secured party of record to file or send a termination statement as required by section 554.9513, subsection 1 or 3;
- e. fails to comply with section 554.9616, subsection 2, paragraph “a”, and whose failure is part of a pattern, or consistent with a practice, of noncompliance; or
- f. fails to comply with section 554.9616, subsection 2, paragraph “b”.

6. *Statutory damages — noncompliance with section 554.9210.* A debtor or consumer obligor may recover damages under subsection 2 and, in addition, five hundred dollars in each case from a person that, without reasonable cause, fails to comply with a request under section 554.9210. A recipient of a request under section 554.9210 which never claimed an interest in the collateral or obligations that are the subject of a request under that section has a reasonable excuse for failure to comply with the request within the meaning of this subsection.

7. *Limitation of security interest — noncompliance with section 554.9210.* If a secured party fails to comply with a request regarding a list of collateral or a statement of account under section 554.9210, the secured party may claim a security interest only as shown in the list or statement included in the request as against a person that is reasonably misled by the failure.

2000 Acts, ch 1149, §123, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9626 Action in which deficiency or surplus is in issue.

1. *Applicable rules if amount of deficiency or surplus in issue.* In an action arising from a transaction, other than a consumer transaction, in which the amount of a deficiency or surplus is in

issue, the following rules apply:

a. a secured party need not prove compliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance unless the debtor or a secondary obligor places the secured party’s compliance in issue.

b. if the secured party’s compliance is placed in issue, the secured party has the burden of establishing that the collection, enforcement, disposition, or acceptance was conducted in accordance with this part.

c. except as otherwise provided in section 554.9628, if a secured party fails to prove that the collection, enforcement, disposition, or acceptance was conducted in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance, the liability of a debtor or a secondary obligor for a deficiency is limited to an amount by which the sum of the secured obligation, expenses, and attorney’s fees exceeds the greater of:

(1) the proceeds of the collection, enforcement, disposition, or acceptance; or

(2) the amount of proceeds that would have been realized had the noncomplying secured party proceeded in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance.

d. for purposes of paragraph “c”, subparagraph (2), the amount of proceeds that would have been realized is equal to the sum of the secured obligation, expenses, and attorney’s fees unless the secured party proves that the amount is less than that sum.

e. if a deficiency or surplus is calculated under section 554.9615, subsection 6, the debtor or obligor has the burden of establishing that the amount of proceeds of the disposition is significantly below the range of prices that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

2. *Nonconsumer transactions — no inference.* The limitation of the rules in subsection 1 to transactions other than consumer transactions is intended to leave to the court the determination of the proper rules in consumer transactions. The court may not infer from that limitation the nature of the proper rule in consumer transactions and may continue to apply established approaches.

2000 Acts, ch 1149, §124, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9627 Determination of whether conduct was commercially reasonable.

1. *Greater amount obtainable under other circumstances — no preclusion of commercial reasonableness.* The fact that a greater amount could have been obtained by a collection, enforcement,

disposition, or acceptance at a different time or in a different method from that selected by the secured party is not of itself sufficient to preclude the secured party from establishing that the collection, enforcement, disposition, or acceptance was made in a commercially reasonable manner.

2. *Dispositions that are commercially reasonable.* A disposition of collateral is made in a commercially reasonable manner if the disposition is made:

- a. in the usual manner on any recognized market;
- b. at the price current in any recognized market at the time of the disposition; or
- c. otherwise in conformity with reasonable commercial practices among dealers in the type of property that was the subject of the disposition.

3. *Approval by court or on behalf of creditors.* A collection, enforcement, disposition, or acceptance is commercially reasonable if it has been approved:

- a. in a judicial proceeding;
- b. by a bona fide creditors' committee;
- c. by a representative of creditors; or
- d. by an assignee for the benefit of creditors.

4. *Approval under subsection 3 not necessary — absence of approval has no effect.* Approval under subsection 3 need not be obtained, and lack of approval does not mean that the collection, enforcement, disposition, or acceptance is not commercially reasonable.

2000 Acts, ch 1149, §125, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9628 Nonliability and limitation on liability of secured party — liability of secondary obligor.

1. *Limitation of liability of secured party for noncompliance with article.* Unless a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the person:

a. the secured party is not liable to the person, or to a secured party or lienholder that has filed a financing statement against the person, for failure to comply with this Article; and

b. the secured party's failure to comply with this Article does not affect the liability of the person for a deficiency.

2. *Limitation of liability based on status as secured party.* A secured party is not liable because of its status as secured party:

a. to a person that is a debtor or obligor, unless the secured party knows:

- (1) that the person is a debtor or obligor;
- (2) the identity of the person; and
- (3) how to communicate with the person; or

b. to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

- (1) that the person is a debtor; and
- (2) the identity of the person.

3. *Limitation of liability if reasonable belief that transaction not a consumer-goods transaction or consumer transaction.* A secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer-goods transaction or a consumer transaction or that goods are not consumer goods, if the secured party's belief is based on its reasonable reliance on:

a. a debtor's representation concerning the purpose for which collateral was to be used, acquired, or held; or

b. an obligor's representation concerning the purpose for which a secured obligation was incurred.

4. *Limitation of liability for statutory damages.* A secured party is not liable to any person under section 554.9625, subsection 3, paragraph "b", for its failure to comply with section 554.9616.

5. *Limitation of multiple liability for statutory damages.* A secured party is not liable under section 554.9625, subsection 3, paragraph "b", more than once with respect to any one secured obligation.

2000 Acts, ch 1149, §126, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

PART 7

TRANSITION

554.9701 Effective date.

This Article takes effect on July 1, 2001.

2000 Acts, ch 1149, §127, 187
Section effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9702 Savings clause.

1. *Pre-effective-date transactions or liens.* Except as otherwise provided in this part, this Act* applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before July 1, 2001.

2. *Continuing validity.* Except as otherwise provided in subsection 3 and sections 554.9703, 554.9704, 554.9705, 554.9706, 554.9707, 554.9708, and 554.9709:

a. transactions and liens that were not governed by former Article 9, were validly entered into or created before July 1, 2001, and would be subject to this Act* if they had been entered into or created after July 1, 2001, and the rights, duties, and interests flowing from those transactions and liens remain valid after July 1, 2001; and

b. the transactions and liens may be terminated, completed, consummated, and enforced as required or permitted by this Act* or by the law

that otherwise would apply if this Act* had not taken effect.

3. *Pre-effective-date proceedings.* This Act* does not affect an action, case, or proceeding commenced before July 1, 2001.

2000 Acts, ch 1149, §128, 187
 *2000 Acts, ch 1149
 Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
 NEW section

554.9703 Security interest perfected before effective date.

1. *Continuing priority over lien creditor — perfection requirements satisfied.* A security interest that is enforceable immediately before July 1, 2001, and would have priority over the rights of a person that becomes a lien creditor at that time is a perfected security interest under this Act* if, on July 1, 2001, the applicable requirements for enforceability and perfection under this Act* are satisfied without further action.

2. *Continuing priority over lien creditor — perfection requirements not satisfied.* Except as otherwise provided in section 554.9705, if, immediately before July 1, 2001, a security interest is enforceable and would have priority over the rights of a person that becomes a lien creditor at that time, but the applicable requirements for enforceability or perfection under this Act* are not satisfied on July 1, 2001, the security interest:

- a. is a perfected security interest for one year after July 1, 2001;
- b. remains enforceable thereafter only if the security interest becomes enforceable under section 554.9203 before the year expires; and
- c. remains perfected thereafter only if the applicable requirements for perfection under this Act* are satisfied before the year expires.

2000 Acts, ch 1149, §129, 187
 *2000 Acts, ch 1149
 Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
 NEW section

554.9704 Security interest unperfected before effective date.

A security interest that is enforceable immediately before July 1, 2001, but which would be subordinate to the rights of a person that becomes a lien creditor at that time:

1. remains an enforceable security interest for one year after July 1, 2001;
2. remains enforceable thereafter if the security interest becomes enforceable under section 554.9203 on July 1, 2001, or within one year thereafter; and
3. becomes perfected:
 - a. without further action, on July 1, 2001, if the applicable requirements for perfection under this Act* are satisfied before or at that time; or
 - b. when the applicable requirements for perfection are satisfied if the requirements are satis-

fied after that time.

2000 Acts, ch 1149, §130, 187
 *2000 Acts, ch 1149
 Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
 NEW section

554.9705 Effectiveness of action taken before effective date.

1. *Pre-effective-date action — one-year perfection period unless reperfected.* If action, other than the filing of a financing statement, is taken before July 1, 2001, and the action would have resulted in priority of a security interest over the rights of a person that becomes a lien creditor had the security interest become enforceable before July 1, 2001, the action is effective to perfect a security interest that attaches under this Act* within one year after July 1, 2001. An attached security interest becomes unperfected one year after July 1, 2001, unless the security interest becomes a perfected security interest under this Act* before the expiration of that period.

2. *Pre-effective-date filing.* The filing of a financing statement before July 1, 2001, is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under this Act*.

3. *Pre-effective-date filing in jurisdiction formerly governing perfection.* This Act* does not render ineffective an effective financing statement that, before July 1, 2001, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in former section 554.9103. However, except as otherwise provided in subsections 4 and 5 and section 554.9706, the financing statement ceases to be effective at the earlier of:

- a. the time the financing statement would have ceased to be effective under the law of the jurisdiction in which it is filed; or
- b. June 30, 2006.

4. *Continuation statement.* The filing of a continuation statement after July 1, 2001, does not continue the effectiveness of the financing statement filed before July 1, 2001. However, upon the timely filing of a continuation statement after July 1, 2001, and in accordance with the law of the jurisdiction governing perfection as provided in part 3, the effectiveness of a financing statement filed in the same office in that jurisdiction before July 1, 2001, continues for the period provided by the law of that jurisdiction.

5. *Application of subsection 3, paragraph "b", to transmitting utility financing statement.* Subsection 3, paragraph "b", applies to a financing statement that, before July 1, 2001, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in former section 554.9103 only to the extent that part 3 provides that the law of a jurisdiction other than the jurisdiction in which the financing state-

ment is filed governs perfection of a security interest in collateral covered by the financing statement.

6. *Application of part 5.* A financing statement that includes a financing statement filed before July 1, 2001, and a continuation statement filed after July 1, 2001, is effective only to the extent that it satisfies the requirements of part 5 for an initial financing statement.

2000 Acts, ch 1149, §131, 187

*2000 Acts, ch 1149

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

NEW section

554.9706 When initial financing statement suffices to continue effectiveness of financing statement.

1. *Initial financing statement in lieu of continuation statement.* The filing of an initial financing statement in the office specified in section 554.9501 continues the effectiveness of a financing statement filed before July 1, 2001, if:

a. the filing of an initial financing statement in that office would be effective to perfect a security interest under this Act;*

b. the pre-effective-date financing statement was filed in an office in another state or another office in this state; and

c. the initial financing statement satisfies subsection 3.

2. *Period of continued effectiveness.* The filing of an initial financing statement under subsection 1 continues the effectiveness of the pre-effective-date financing statement:

a. if the initial financing statement is filed before July 1, 2001, for the period provided in former section 554.9403 with respect to a financing statement; and

b. if the initial financing statement is filed after July 1, 2001, for the period provided in section 554.9515 with respect to an initial financing statement.

3. *Requirements for initial financing statement under subsection 1.* To be effective for purposes of subsection 1, an initial financing statement must:

a. satisfy the requirements of part 5 for an initial financing statement;

b. identify the pre-effective-date financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and

c. indicate that the pre-effective-date financing statement remains effective.

2000 Acts, ch 1149, §132, 187

*2000 Acts, ch 1149

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

NEW section

554.9707 Amendment of pre-effective-date financing statement.

1. *Pre-effective-date financing statement.* In this section, “pre-effective-date financing statement” means a financing statement filed before July 1, 2001.

2. *Applicable law.* After July 1, 2001, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a pre-effective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in part 3. However, the effectiveness of pre-effective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

3. *Method of amending — general rule.* Except as otherwise provided in subsection 4, if the law of this state governs perfection of a security interest, the information in a pre-effective-date financing statement may be amended after July 1, 2001, only if:

a. the pre-effective-date financing statement and an amendment are filed in the office specified in section 554.9501; or

b. an amendment is filed in the office specified in section 554.9501 concurrently with, or after the filing in that office of, an initial financing statement that satisfies section 554.9706, subsection 3; or

c. an initial financing statement that provides the information as amended and satisfies section 554.9706, subsection 3 is filed in the office specified in section 554.9501.

4. *Method of amending — continuation.* If the law of this state governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement may be continued only under section 554.9705, subsections 4 and 6 or section 554.9706.

5. *Method of amending — additional termination rule.* Whether or not the law of this state governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement filed in this state may be terminated after July 1, 2001, by filing a termination statement in the office in which the pre-effective-date financing statement is filed, unless an initial financing statement that satisfies section 554.9706, subsection 3, has been filed in the office specified by the law of the jurisdiction governing perfection as provided in part 3 as the office in which to file a financing statement.

2000 Acts, ch 1149, §133, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

NEW section

554.9708 Persons entitled to file initial financing statement or continuation statement.

A person may file an initial financing statement or a continuation statement under this part if:

1. the secured party of record authorizes the filing; and
2. the filing is necessary under this part:
 - a. to continue the effectiveness of a financing statement filed before July 1, 2001; or
 - b. to perfect or continue the perfection of a security interest.

2000 Acts, ch 1149, §134, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9709 Priority.

1. *Law governing priority.* This Act* determines the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before July 1, 2001, former Article 9 determines priority.

2. *Priority if security interest becomes enforceable under section 554.9203.* For purposes of section 554.9322, subsection 1, the priority of a security interest that becomes enforceable under section 554.9203 of this Act* dates from July 1, 2001, if the security interest is perfected under this Act* by the filing of a financing statement before July 1, 2001, which would not have been effective to perfect the security interest under former Article 9. This subsection does not apply to conflicting security interests each of which is perfected by the filing of such a financing statement.

2000 Acts, ch 1149, §135, 187
*2000 Acts, ch 1149
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

554.9710 “Former” defined.

References in this part to “former Article 9” or a former section are to that Article or section as in effect immediately before July 1, 2001.

2000 Acts, ch 1149, §136, 187
Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001
NEW section

ARTICLE 11

EFFECTIVE DATE OF 1974 AMENDMENTS

554.11103 Transition to this chapter as amended — general rule.

Transactions validly entered into after July 4, 1966, and before January 1, 1975, which were subject to the provisions of this chapter prior to amendment and which would be subject to this chapter as amended if they had been entered into on or after January 1, 1975, and the rights, duties and interests flowing from such transactions remain valid after January 1, 1975, and may be ter-

minated, completed, consummated or enforced as required or permitted by this chapter as amended. Security interests arising out of such transactions which are perfected on January 1, 1975, shall remain perfected until they lapse or are terminated as provided in this chapter as amended, and may be continued as permitted by this chapter as amended, except as stated in section 554.11105.*

*Section 554.11105 was repealed effective July 1, 2001; corrective legislation is pending

Section not amended; footnote added

554.11105 Transition provision on change of place of filing. Repealed by 2000 Acts, ch 1149, § 186, 187.

Section repealed effective July 1, 2001; 2000 Acts, ch 1149, §187

554.11108 Presumption that rule of law continues unchanged.

Unless a change in law has clearly been made, the provisions of this chapter as amended shall be deemed declaratory of the meaning of this chapter prior to amendment.

2000 Acts, ch 1149, §155, 187
2000 amendment is effective July 1, 2001; 2000 Acts, ch 1149, §187
Section amended

ARTICLE 13

LEASES

PART 1

GENERAL PROVISIONS

554.13103 Definitions and index of definitions.

1. In this Article unless the context otherwise requires:

a. “*Buyer in ordinary course of business*” means a person who in good faith and without knowledge that the sale to the person is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. “*Buying*” may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

b. “*Cancellation*” occurs when either party puts an end to the lease contract for default by the other party.

c. “*Commercial unit*” means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine, or a set of articles, as a suite of furniture or a line of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the

relevant market as a single whole.

d. “*Conforming*” goods or performance under a lease contract means goods or performance that are in accordance with the obligations under the lease contract.

e. “*Consumer lease*” means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual and who takes under the lease primarily for a personal, family, or household purpose, if the total payments to be made under the lease contract, excluding payments for options to renew or buy, do not exceed the dollar amount designated in section 537.1301, subsection 13.

f. “*Fault*” means wrongful act, omission, breach, or default.

g. “*Finance lease*” means a lease with respect to which:

(1) the lessor does not select, manufacture, or supply the goods;

(2) the lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and

(3) one of the following occurs:

(a) the lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;

(b) the lessee’s approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract;

(c) the lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or

(d) if the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing (i) of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person, (ii) that the lessee is entitled under this Article to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods, and (iii) that the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.

h. “*Goods*” means all things that are movable

at the time of identification to the lease contract, or are fixtures (section 554.13309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

i. “*Installment lease contract*” means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause “each delivery is a separate lease” or its equivalent.

j. “*Lease*” means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

k. “*Lease agreement*” means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this Article. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

l. “*Lease contract*” means the total legal obligation that results from the lease agreement as affected by this Article and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

m. “*Leasehold interest*” means the interest of the lessor or the lessee under a lease contract.

n. “*Lessee*” means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.

o. “*Lessee in ordinary course of business*” means a person who in good faith and without knowledge that the lease to the person is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods leases in ordinary course from a person in the business of selling or leasing goods of that kind but does not include a pawnbroker. “*Leasing*” may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

p. “*Lessor*” means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

q. “*Lessor’s residual interest*” means the lessor’s interest in the goods after expiration, termination, or cancellation of the lease contract.

r. “*Lien*” means a charge against or interest in goods to secure payment of a debt or performance

of an obligation, but the term does not include a security interest.

s. “*Lot*” means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

t. “*Merchant lessee*” means a lessee that is a merchant with respect to goods of the kind subject to the lease.

u. “*Present value*” means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

v. “*Purchase*” includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.

w. “*Sublease*” means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

x. “*Supplier*” means a person from whom a lessor buys or leases goods to be leased under a finance lease.

y. “*Supply contract*” means a contract under which a lessor buys or leases goods to be leased.

z. “*Termination*” occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

2. Other definitions applying to this Article and the sections in which they appear are:

“Accessions”	Section 554.13310, subsection 1
“Construction mortgage”	Section 554.13309, subsection 1, paragraph “d”
“Encumbrance”	Section 554.13309, subsection 1, paragraph “e”
“Fixtures”	Section 554.13309, subsection 1, paragraph “a”
“Fixture filing”	Section 554.13309, subsection 1, paragraph “b”
“Purchase money lease”	Section 554.13309, subsection 1, paragraph “c”

3. The following definitions in other Articles apply to this Article:

“Account”	Section 554.9102, subsection 1, paragraph “b”
“Between merchants”	Section 554.2104, subsection 3
“Buyer”	Section 554.2103, subsection 1, paragraph “a”
“Chattel paper”	Section 554.9102, subsection 1, paragraph “k”
“Consumer goods”	Section 554.9102, subsection 1, paragraph “w”

“Document”	Section 554.9102, subsection 1, paragraph “ad”
“Entrusting”	Section 554.2403, subsection 3
“General intangible”	Section 554.9102, subsection 1, paragraph “ap”
“Good faith”	Section 554.2103, subsection 1, paragraph “b”
“Instrument”	Section 554.9102, subsection 1, paragraph “au”
“Merchant”	Section 554.2104, subsection 1
“Mortgage”	Section 554.9102, subsection 1, paragraph “bc”
“Pursuant to commitment”	Section 554.9102, subsection 1, paragraph “bp”
“Receipt”	Section 554.2103, subsection 1, paragraph “c”
“Sale”	Section 554.2106, subsection 1
“Sale on approval”	Section 554.2326
“Sale or return”	Section 554.2326
“Seller”	Section 554.2103, subsection 1, paragraph “d”

4. In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

2000 Acts, ch 1149, §156, 187
2000 amendments to subsection 3 are effective July 1, 2001; 2000 Acts, ch 1149, §187
Subsection 3 amended

PART 3

EFFECT OF LEASE CONTRACT

554.13303 Alienability of party’s interest under lease contract or of lessor’s residual interest in goods — delegation of performance — transfer of rights.

1. As used in this section, “*creation of a security interest*” includes the sale of a lease contract that is subject to Article 9, Secured Transactions, by reason of section 554.9109, subsection 1, paragraph “c”.

2. Except as provided in subsection 3 and section 554.9407, a provision in a lease agreement which (i) prohibits the voluntary or involuntary transfer, including a transfer by sale, sublease, creation or enforcement of a security interest, or attachment, levy, or other judicial process, of an interest of a party under the lease contract or of the lessor’s residual interest in the goods, or (ii) makes such a transfer an event of default, gives rise to the rights and remedies provided in subsection 4, but a transfer that is prohibited or is an event of default under the lease agreement is otherwise effective.

3. A provision in a lease agreement which (i) prohibits a transfer of a right to damages for default with respect to the whole lease contract or of a right to payment arising out of the transferor’s

due performance of the transferor's entire obligation, or (ii) makes such a transfer an event of default, is not enforceable, and such a transfer is not a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract within the purview of subsection 4.

4. Subject to subsection 3 and section 554.9407:

a. if a transfer is made which is made an event of default under a lease agreement, the party to the lease contract not making the transfer, unless that party waives the default or otherwise agrees, has the rights and remedies described in section 554.13501, subsection 2;

b. if paragraph "a" is not applicable and if a transfer is made that (i) is prohibited under a lease agreement or (ii) materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract, unless the party not making the transfer agrees at any time to the transfer in the lease contract or otherwise, then, except as limited by contract, (i) the transferor is liable to the party not making the transfer for damages caused by the transfer to the extent that the damages could not reasonably be prevented by the party not making the transfer and (ii) a court having jurisdiction may grant other appropriate relief, including cancellation of the lease contract or an injunction against the transfer.

5. A transfer of "the lease" or of "all my rights under the lease", or a transfer in similar general terms, is a transfer of rights and, unless the language or the circumstances, as in a transfer for security, indicate the contrary, the transfer is a delegation of duties by the transferor to the transferee. Acceptance by the transferee constitutes a promise by the transferee to perform those duties. The promise is enforceable by either the transferor or the other party to the lease contract.

6. Unless otherwise agreed by the lessor and the lessee, a delegation of performance does not relieve the transferor as against the other party of any duty to perform or of any liability for default.

7. In a consumer lease, to prohibit the transfer of an interest of a party under the lease contract or to make a transfer an event of default, the language must be specific, by a writing, and conspicuous.

2000 Acts, ch 1149, §157, 187

2000 amendments are effective July 1, 2001; 2000 Acts, ch 1149, §187

Subsections 1 and 2 amended

Subsection 3 stricken and former subsections 4 – 8 renumbered as 3 –

7

Subsections 3 and 4 amended

554.13307 Priority of liens arising by attachment or levy on, security interests in, and other claims to goods.

1. Except as otherwise provided in section

554.13306, a creditor of a lessee takes subject to the lease contract.

2. Except as otherwise provided in subsection 3 and in sections 554.13306 and 554.13308, a creditor of a lessor takes subject to the lease contract unless the creditor holds a lien that attached to the goods before the lease contract became enforceable.

3. Except as otherwise provided in sections 554.9317, 554.9321, and 554.9323, a lessee takes a leasehold interest subject to a security interest held by a creditor of the lessor.

2000 Acts, ch 1149, §158, 187

2000 amendments to this section are effective July 1, 2001; 2000 Acts, ch 1149, §187

Section amended

554.13309 Lessor's and lessee's rights when goods become fixtures.

1. In this section:

a. goods are "fixtures" when they become so related to particular real estate that an interest in them arises under real estate law;

b. a "fixture filing" is the filing, in the office where a record of a mortgage on the real estate would be filed or recorded, of a financing statement covering goods that are or are to become fixtures and conforming to the requirements of section 554.9502, subsections 1 and 2;

c. a lease is a "purchase money lease" unless the lessee has possession or use of the goods or the right to possession or use of the goods before the lease agreement is enforceable;

d. a mortgage is a "construction mortgage" to the extent it secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land, if the recorded writing so indicates; and

e. "encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests.

2. Under this Article a lease may be of goods that are fixtures or may continue in goods that become fixtures, but no lease exists under this Article of ordinary building materials incorporated into an improvement on land.

3. This Article does not prevent creation of a lease of fixtures pursuant to real estate law.

4. The perfected interest of a lessor of fixtures has priority over a conflicting interest of an encumbrancer or owner of the real estate if:

a. the lease is a purchase money lease, the conflicting interest of the encumbrancer or owner arises before the goods become fixtures, the interest of the lessor is perfected by a fixture filing before the goods become fixtures or within ten days thereafter, and the lessee has an interest of record in the real estate or is in possession of the real estate; or

b. the interest of the lessor is perfected by a fixture filing before the interest of the encumbrancer or owner is of record, the lessor's interest has

priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the lessee has an interest of record in the real estate or is in possession of the real estate.

5. The interest of a lessor of fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real estate if:

a. the fixtures are readily removable factory or office machines, readily removable equipment that is not primarily used or leased for use in the operation of the real estate, or readily removable replacements of domestic appliances that are goods subject to a consumer lease, and before the goods become fixtures the lease contract is enforceable; or

b. the conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the lease contract is enforceable; or

c. the encumbrancer or owner has consented in writing to the lease or has disclaimed an interest in the goods as fixtures; or

d. the lessee has a right to remove the goods as against the encumbrancer or owner. If the lessee's right to remove terminates, the priority of the interest of the lessor continues for a reasonable time.

6. Notwithstanding subsection 4, paragraph "a", but otherwise subject to subsections 4 and 5, the interest of a lessor of fixtures, including the lessor's residual interest, is subordinate to the conflicting interest of an encumbrancer of the real estate under a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent given to refinance a construction mortgage, the conflicting interest of an encumbrancer of the real estate under a mortgage has this priority to the same extent as the encumbrancer of the real estate under the construction mortgage.

7. In cases not within the preceding subsections, priority between the interest of a lessor of fixtures, including the lessor's residual interest, and the conflicting interest of an encumbrancer or owner of the real estate who is not the lessee is determined by the priority rules governing conflicting interests in real estate.

8. If the interest of a lessor of fixtures, including the lessor's residual interest, has priority over all conflicting interests of all owners and encumbrancers of the real estate, the lessor or the lessee may (i) on default, expiration, termination, or cancellation of the lease agreement but subject to the lease agreement and this Article, or (ii) if necessary to enforce other rights and remedies of the lessor or lessee under this Article, remove the goods from the real estate, free and clear of all conflicting interests of all owners and encumbrancers of the real estate, but the lessor or lessee must reimburse any encumbrancer or owner of the real estate who is not the lessee and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation.

9. Even though the lease agreement does not create a security interest, the interest of a lessor of fixtures, including the lessor's residual interest, is perfected by filing a financing statement as a fixture filing for leased goods that are or are to become fixtures in accordance with the relevant provisions of the Article on Secured Transactions (Article 9).

2000 Acts, ch 1149, §159, 187
2000 amendment to subsection 1, paragraph b, is effective July 1, 2001;
2000 Acts, ch 1149, §187
Subsection 1, paragraph b amended

CHAPTER 554B

SECURED TRANSACTIONS OF TRANSMITTING UTILITIES

554B.1 Definitions.

As used in this chapter "*transmitting utility*" has the same meaning as defined in the Uniform Commercial Code, section 554.9102, subsection 1. Security interests filed pursuant to this chapter prior to January 1, 1975, which have not been ter-

minated, are deemed to be filed in accordance with section 554.9501, subsection 2.

2000 Acts, ch 1149, §175, 187
2000 amendments to this section are effective July 1, 2001; 2000 Acts, ch 1149, §187
Section amended

CHAPTER 554D

UNIFORM ELECTRONIC TRANSACTIONS ACT

554D.104 Scope.

1. Except as provided in subsection 2, this chapter applies to electronic records and electronic signatures relating to a transaction.

2. *a.* (1) This chapter does not apply to the following:

(a) An application which would involve construction of a rule of law that is clearly inconsistent with the manifest intent of the body imposing the requirement or repugnant to the context of the same rule of law. However, the mere requirement that information be in writing, written, or printed shall not by itself be sufficient to establish an intent which is inconsistent with the requirement of this section.

(b) With respect to a consumer transaction, a record that serves as a unique and transferable physical expression of rights and obligations including, without limitation, negotiable instruments and other instruments of title where possession of the instrument is deemed to confer title.

(c) An electronic transaction initiated at a satellite terminal, as defined in section 527.2, or the processing and routing of transaction data by a central routing unit or a data processing center, each as defined in section 527.2.

(2) Except as provided under paragraph “b”, this chapter does not apply to a transaction to the extent it is governed by any of the following:

(a) A disclosure requirement associated with a consumer transaction, including, but not limited to, such disclosures required under chapter 13C, sections 321.69 and 321.71, chapters 516D, 523A, 523B, 523G, 533D, 537, 537B, 538A, 552, 552A, 555A, 557A, 557B, 558A, 562A, and 562B, section 714.16, and chapters 714B and 714D, or an administrative rule adopted pursuant to such sections or chapters.

(b) A rule of law governing the creation or execution of a will or trust, living will, a general, durable, or healthcare power of attorney, or a voluntary, involuntary, or standby guardianship or conservatorship.

(c) Chapter 554 other than articles 2 and 13 and sections 554.1107 and 554.1206.

b. This chapter applies to an electronic record or electronic signature otherwise excluded from the application of this chapter under paragraph “a” to the extent it is governed by a law other than those specified in paragraph “a”, subparagraph (2).

3. A transaction subject to this chapter is also subject to other applicable substantive law.

4. A choice of law provision in a computer information agreement which provides that the contract is to be interpreted pursuant to the laws of a state that has enacted the uniform computer in-

formation transactions Act, as proposed by the national conference of commissioners on uniform state laws, or any substantially similar law, is voidable and the agreement shall be interpreted pursuant to the laws of this state if the party against whom enforcement of the choice of law provision is sought is a resident of this state or has its principal place of business located in this state. For purposes of this subsection, a “*computer information agreement*” means an agreement that would be governed by the uniform computer information transactions Act or substantially similar law as enacted in the state specified in the choice of laws provision if that state’s law were applied to the agreement.

Subsection 4 is repealed effective July 1, 2002; 2000 Acts, ch 1189, §32; 2001 Acts, ch 34, §1

Section not amended; footnote revised and internal reference change applied

554D.118 Transferable records.

1. For purposes of this section, “*transferable record*” means an electronic record that satisfies both of the following:

a. The electronic record would be a note under chapter 554, article 3, or a document under chapter 554, article 7, if the electronic record were in writing.

b. The issuer of the electronic record expressly has agreed such electronic record is a transferable record.

2. A person has control of a transferable record if a system employed for evidencing the transfer of interests in the transferable record reliably establishes that person as the person to which the transferable record was issued or transferred.

3. A system satisfies subsection 2, and a person is deemed to have control of a transferable record, if the transferable record is created, stored, and assigned in such a manner that satisfies all of the following:

a. A single authoritative copy of the transferable record exists which is unique, identifiable, and, except as otherwise provided in paragraphs “d”, “e”, and “f”, unalterable.

b. The authoritative copy identifies the person asserting control as one of the following:

(1) The person to which the transferable record was issued.

(2) If the authoritative copy indicates that the transferable record has been transferred, the person to which the transferable record was most recently transferred.

c. The authoritative copy is communicated to and maintained by the person asserting control or such person’s designated custodian.

d. Copies or revisions that add or change an identified assignee of the authoritative copy can

be made only with the consent of the person asserting control.

e. Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy.

f. A revision of the authoritative copy is readily identifiable as authorized or unauthorized.

4. Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in section 554.1201, of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under chapter 554, including, if the applicable statutory requirements under section 554.3302, subsection 1, section 554.7501, or section 554.9308* are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable document of title has been duly negotiated, or a purchaser, respectively. Delivery, possession, and endorsement

are not required to obtain or exercise any of the rights under this subsection.

5. Except as otherwise agreed, an obligor under a transferable record has the same rights and defenses as an equivalent obligor under equivalent records or writings under chapter 554.

6. If requested by a person against which enforcement is sought, the person seeking to enforce the transferable record shall provide reasonable proof that the person is in control of the transferable record. Proof may include access to the authoritative copy of the transferable record and related business records sufficient to review the terms of the transferable record and to establish the identity of the person having control of the transferable record.

*Section 554.9308 was repealed and replaced effective July 1, 2001; corrective legislation is pending
Section not amended; footnote added

CHAPTER 555B

DISPOSAL OF ABANDONED MOBILE HOMES AND PERSONAL PROPERTY

555B.1 Definitions.

Unless the context otherwise requires, in this chapter:

1. *“Abandoned”* means abandoned as provided in section 562B.27, subsection 1.

2. *“Claimant”* includes but is not limited to any government subdivision with authority to levy a tax on abandoned personal property. *“Claimant”* also includes a holder of a lien as defined in section 555B.2.

3. *“Demolisher”* means demolisher as defined in section 321.89.

4. *“Junkyard”* means junkyard as defined in section 306C.1.

5. *“Mobile home”* includes “manufactured

homes” and “modular homes” as those terms are defined in section 435.1, if the manufactured homes or modular homes are located in a manufactured home community or mobile home park.

6. *“Personal property”* includes personal property of the mobile home owner in the abandoned mobile home, on the mobile home lot, in the immediate vicinity of the abandoned mobile home and the mobile home lot, and in any storage area provided by the real property owner for the use of the mobile home owner.

7. *“Real property owner”* means the owner or other lawful possessor of real property upon which a mobile home is located.

Terminology change applied

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. *“Manufactured home community”* means a manufactured home community as defined in section 435.1.

3. *“Mobile home park”* means a mobile home park as defined in section 435.1.

4. *“Personal property”* includes personal prop-

erty 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.

5. *“Valueless home”* means a home located in a manufactured home community or 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.

2001 Acts, ch 153, §12
Section amended

555C.2 Removal or transfer of title of valueless home — presumption of value.

1. An owner of a manufactured home community or mobile home park may remove, or cause to be removed, from the manufactured home community or mobile home park a valueless home and personal property associated with the home at any time following a determination of abandonment by the manufactured home community or mobile home park owner 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 or transfer of title, the manufactured home community or mobile home park owner shall give written notice to the county treasurer for the county in which the manufactured home community or 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 or transfer of title, 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 manufactured home community or

mobile home park owner pertaining to the valueless home, if the manufactured home community or 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 manufactured home community or mobile home park owner allows a disinterested third party to remove the valueless home and personal property or to leave the home in the manufactured home community or mobile home park in a transaction in which the manufactured home community or mobile home park owner receives no consideration.

2001 Acts, ch 153, §16
Terminology change applied

555C.3 New title — third party.

If a new title to a valueless home is to be issued to a third party, 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 manufactured home community or 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.

2001 Acts, ch 153, §16
Terminology change applied

555C.4 Removal by manufactured home community or mobile home park owner.

Unless the valueless home is to be titled in the name of a third party, the manufactured home community or 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 manufactured home community or mobile home park owner shall determine.

2001 Acts, ch 153, §16
Terminology change applied

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 a corporation,

cooperative association, joint stock company, business trust, investment company, partnership, limited liability company, trust company, mutual fund, or other business entity consisting of one or more persons, whether or not for profit.

3. “*Cooperative association*” means an entity which is structured and operated on a cooperative basis, including an association of persons orga-

nized under chapter 497, 498, or 499; an entity composed of entities organized under those chapters; a cooperative corporation organized under chapter 501; a cooperative association organized under chapter 490; or any other entity recognized pursuant to 26 U.S.C. § 1381(a) which meets the definitional requirements of an association as provided in 12 U.S.C. § 1141(j)(a) or 7 U.S.C. § 291.

4. “*Financial organization*” means any savings and loan association, building and loan association, credit union, cooperative bank or investment company, engaged in business in this state.

5. “*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.

6. “*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.

7. “*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.

8. “*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.

9. “*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.

10. “*Property*” means a fixed and certain interest in or right in an intangible that is held, issued, or owed in the course of a holder’s business, or by a government or governmental entity, and all income or increment therefrom, including that which is referred to as or evidenced by any of the following:

a. Money, check, draft, deposit, interest, dividend, and income.

b. Credit balance, customer overpayment, gift certificate, security deposit, refund, credit memorandum, unpaid wage, unused airline ticket, unused ticket, mineral proceeds, and unidentified remittance and electronic fund transfer.

c. Stock or other evidence of ownership interests in a business association.

d. Bond, debenture, note, or other evidence of indebtedness.

e. Money deposited to redeem stocks, bonds, coupons, and other securities, or to make distributions.

f. An amount due and payable under the terms of an insurance policy, including policies providing life insurance, property and casualty insurance, workers’ compensation insurance, or health and disability benefits insurance.

g. An amount distributable from a trust or custodian fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefits.

h. Amounts distributable from a mineral interest in land.

i. Any other fixed and certain interest or right in an intangible that is held, issued, or owing in the course of a holder’s business, or by a government or governmental entity.

“*Property*” does not include credits, advance payments, overpayments, refunds, or credit memoranda shown on the books and records of a business association with respect to another business association unless the balance is property described in section 556.2 held by a banking organization or financial organization.

11. “*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.

2001 Acts, ch 142, §4, 5; 2001 Acts, ch 152, §1

Subsection 2 amended

NEW subsection 3 and former subsections 3 – 10 renumbered as 4 – 11

Subsection 10, NEW unnumbered paragraph 2

556.5 Stocks and other intangible interests in business associations.

1. Any stock, shareholding, or other intangible ownership interests in a business association, the existence of which is evidenced by records available to the association, is deemed abandoned and, with respect to the interest, the association is the holder, if both of the following apply:

a. The interest in the association is owned by a person who for more than three years has neither claimed a dividend, distribution, nor other sum payable as a result of the interest, or who has not communicated with the association regarding the interest or a dividend, distribution, or other sum payable as the result of the interest, as evidenced by a memorandum or other record on file with the association prepared by an employee of the association.

b. The association does not know the location of the owner at the end of the three-year period.

2. The return of official shareholder notifications or communications by the postal service as undeliverable shall be evidence that the association does not know the location of the owner.

3. This section shall be applicable to both the underlying stock, shareholdings, or other intangible ownership interests of an owner, and any stock, shareholdings, or other intangible ownership interest of which the business association is in possession of the certificate or other evidence or indicia of ownership, and to the stock, shareholdings, or other intangible ownership interests of dividend and nondividend paying business associations whether or not the interest is represented by a certificate.

4. At the time an interest is deemed abandoned under this section, the following shall apply:

a. Except as provided in paragraph “b”, any dividend, distribution, or other sum then held for or owing to the owner as a result of the interest, and not previously deemed abandoned, is deemed abandoned.

b. A disbursement held by a cooperative association shall not be deemed abandoned under this chapter if the disbursement is retained by a cooperative association organized under chapter 490 as provided in section 490.629 or by a cooperative

association organized under chapter 499 as provided in section 499.30A.

5. This section does not apply to any stock or other intangible ownership interest enrolled in a plan that provides for the automatic reinvestment of dividends, distributions, or other sums payable as a result of the interest unless one or more of the following applies:

a. The records available to the administrator of the plan show, with respect to any intangible ownership interest not enrolled in the reinvestment plan, that the owner has not within three years communicated in any manner described in subsection 1.

b. Three years have elapsed since the location of the owner became unknown to the association, as evidenced by the return of official shareholder notifications or communications by the postal service as undeliverable, and the owner has not within those three years communicated in any manner described in subsection 1. The three-year period from the return of official shareholder notifications or communications shall commence from the earlier of the return of the second such mailing or the time the holder discontinues mailings to the shareholder.

2001 Acts, ch 142, §6
Subsection 4 amended

CHAPTER 556H

UNCLAIMED DEER VENISON

556H.1 Unclaimed deer venison held by a licensed processing establishment.

All deer venison deposited with an establishment licensed pursuant to chapter 189A, which remains unclaimed for a period of two months after the establishment has attempted to contact the deer venison owner at least once by ordinary mail at the owner’s last known mailing address, shall be presumed to be abandoned. The establishment may dispose of the abandoned deer venison by do-

nating the deer venison to a local nonprofit, charitable organization. For purposes of this section, the term “deer” means the Cervidae or game deer excluding any farm deer as defined in section 481A.1, subsection 20, paragraph “h”, and all donated deer venison shall include game deer venison only and shall not be processed as a multispecies meat food product pursuant to chapter 189A.

2001 Acts, ch 23, §1
NEW section

CHAPTER 557B

MEMBERSHIP CAMPGROUNDS

557B.1 Definitions.

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

1. “*Advertisement*” means an attempt by publication, dissemination, solicitation, or circulation to induce directly or indirectly any person to enter into an obligation or acquire a title or interest in a membership camping contract.

2. “*Affiliate*” means any person who, directly

or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the person specified.

3. “*Blanket encumbrance*” means any mortgage, deed of trust, option to purchase, vendor’s lien or interest under a contract or agreement of sale, judgment lien, federal or state tax lien, or any other material lien or encumbrance which secures or evidences the obligation to pay money or to sell

or convey all or part of a campground located in this state, made available to purchasers by the membership camping operator, and which authorizes, permits, or requires the foreclosure or other disposition of the campground. "Blanket encumbrance" also includes the lessor's interest in a lease of all or part of a campground which is located in this state and which is made available to purchasers by a membership camping operator. "Blanket encumbrance" does not include a lien for taxes or assessments levied by a public body which are not yet due and payable.

4. "Business day" means any day except Saturday, Sunday, or a legal holiday.

5. "Campground" means real property made available to persons for camping, whether by tent, trailer, camper, cabin, recreational vehicle, or similar device and includes the outdoor recreational facilities located on the real property. "Campground" does not include a manufactured home community or mobile home park as defined in section 435.1.

6. "Controlling persons of a membership camping operator" means each director and officer and each owner of twenty-five percent or more of the stock of the operator, if the operator is a corporation; and each general partner and each owner of twenty-five percent or more of the partnership or

other interests, if the operator is a general or limited partnership; or other person doing business as a membership camping operator.

7. "Membership camping contract" means an agreement offered or sold within this state evidencing a purchaser's right to use a campground of a membership camping operator for more than thirty days during the term of the agreement.

8. "Membership camping operator" or "operator" means any person other than one who is tax exempt under section 501(c)(3) of the Internal Revenue Code, as defined in section 422.3, who owns or operates a campground and offers or sells membership camping contracts paid for by a fee or periodic payments. "Membership camping operator" does not include the operator of a manufactured home community or mobile home park as defined in chapter 435.

9. "Offer" means an inducement, solicitation, or attempt to encourage a person to acquire a membership camping contract.

10. "Purchaser" means a person who enters into a membership camping contract with a membership camping operator and obtains the right to use the campground owned or operated by the membership camping operator.

2001 Acts, ch 153, §16
Terminology change applied

CHAPTER 558

CONVEYANCES

558.15 Notarial stamps or seals of nonresidents — presumption.

Any notarial stamp or seal purporting to have been affixed to any instrument in writing, by any notary public residing elsewhere than in this state, shall be prima facie evidence that the words thereon engraved conform to the requirements of the law of the place where such certificate purports to have been made.

2001 Acts, ch 38, §6; 2001 Acts, ch 176, §45, 46
2001 amendment takes effect January 1, 2002; 2001 Acts, ch 176, §45, 46
Section amended

558.39 Forms of acknowledgment — foreign acknowledgments.

The following forms of acknowledgment shall be sufficient in the cases to which they are respectively applicable. In each case where one of these forms is used, the name of the state and county where the acknowledgment is taken shall precede the body of the certificate, and the signature and official title of the officer shall follow it as indicated in the first form and shall constitute a part of the certificate, and the stamp or seal of the officer shall be attached when necessary under the provision of this chapter and as provided in section 9E.6A. No certificate of acknowledgment shall be

held to be defective on account of the failure to show the official title of the officer making the certificate if such title appears either in the body of such certificate or in connection therewith, or with the signature thereto.

1. In the case of natural persons acting in their own right:

State of)
County of) ss.
On this day of
(month), (year), before me,
(Insert title of acknowledging officer), personally
appeared, to me known to be the
person named in and who executed
the foregoing instrument, and acknowledged that
..... executed the same as
voluntary act and deed.

.....
Notary Public in the state of Iowa.

2. In the case of natural persons acting by attorney:

On this day of
(month), (year), before me,
(Insert title of acknowledging officer), personally
appeared, to me known to be the

person who executed the foregoing instrument in behalf of , and acknowledged that that person executed the same as the voluntary act and deed of said

3. In the case of corporations or joint-stock associations:

On this day of (month), (year), before me, a (Insert title of acknowledging officer) in and for said county, personally appeared , to me personally known, who being by me duly (sworn or affirmed) did say that that person is (Insert title of executing officer) of said (corporation or association) and that said instrument was signed on behalf of the said (corporation or association) by authority of its board of (directors or trustees) and the said acknowledged the execution of said instrument to be the voluntary act and deed of said (corporation or association) by it voluntarily executed.

3A. In the case of limited liability companies:

On this day of (month), (year), before me, a (Insert title of acknowledging officer) in and for said county, personally appeared , to me personally known, who being by me duly (sworn or affirmed) did say that that person is (Insert title of executing member) of said (limited liability company) and that said instrument was signed on behalf of the said (limited liability company) by authority of its managers and the said acknowledged the execution of said instrument to be the voluntary act and deed of said (limited liability company) by it voluntarily executed.

4. In the case of partnerships:

On this day of (month), (year), before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared , to me personally known, who being by me duly sworn, did say that the person is one of the partners of , a partnership, and that the instrument was signed on behalf of the partnership by authority of the partners and the partner acknowledged the execution of the instrument to be the voluntary act and deed of the partnership by it and by the partner voluntarily executed.

5. In the case of an individual fiduciary:

On this day of (month), (year), before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared , to me known to be the identical person named in and

who executed the foregoing instrument, and acknowledged that the person, as the fiduciary, executed the instrument as the voluntary act and deed of the person and of the fiduciary.

6. In the case of a corporate fiduciary:

On this day of (month), (year), before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared and , to me personally known, who, being by me duly sworn, did say that they are the and , respectively, of the corporation executing the foregoing instrument; that the instrument was signed on behalf of the corporation by authority of its Board of Directors; that and acknowledged the execution of the instrument to be the voluntary act and deed of the corporation and of the fiduciary, by it, by them and as the fiduciary voluntarily executed.

7. In the case of a limited partnership with corporate general partner:

On this day of (month), (year), before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared , to me personally known, who being by me duly sworn did say that the person is the of , the General Partner of , a limited partnership, executing the foregoing instrument, that the instrument was signed on behalf of the corporation as General Partner of , a limited partnership, by authority of the corporation's Board of Directors; and that as that officer acknowledged execution of the instrument to be the voluntary act and deed of the corporation and limited partnership by it and by the officer voluntarily executed.

8. In the case of a limited partnership with an individual general partner:

On this day of (month), (year), before me the undersigned, a Notary Public in and for the State of Iowa, personally appeared , to me personally known, who, being by me duly sworn, did say that the person is (a) (the) General Partner of , an Iowa limited partnership, executing the foregoing instrument, that the instrument was signed on behalf of the limited partnership by authority of the limited partnership; and the general partner acknowledged the execution of the instrument to be the voluntary act and deed of the limited partnership, by it and by the general partner voluntarily executed.

9. In the case of joint ventures:

On this day of

(month), (year), before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared and, to me personally known, who, being by me duly sworn, did say that they are the and, respectively, of, an Iowa corporation, a joint venturer of, a joint venture, executing the foregoing instrument, that the instrument was signed on behalf of the corporation as a joint venturer of, a joint venture, by authority of its Board of Directors; and that and, as such officers, acknowledged the execution of the instrument to be the voluntary act and deed of the corporation and joint venture, by the corporation and joint venture and by them voluntarily executed.

10. In the case of municipalities:

On this day of (month), (year), before me,, a Notary Public in and for the State of Iowa, personally appeared and, to me personally known, and, who, being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of, Iowa; that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as contained in Ordinance No. passed (the Resolution adopted) by the City Council, under Roll Call No. of the City Council on the day of (month), (year), and that and acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation, by it voluntarily executed.

11. In the case of counties:

On this day of (month), (year), before me,, a Notary Public in and for the State of Iowa, personally appeared and, to me personally known, and who, being by me duly sworn, did say that they are the Chairperson of the Board of Supervisors and County Auditor, respectively, of the County of, Iowa; that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its Board of Supervisors, as contained in Ordinance No. passed (the Resolution adopted) by the Board of Supervisors, under Roll Call No. of the Board of Supervisors on the day of (month), (year), and and acknowledged the execution of the instrument to be

their voluntary act and deed and the voluntary act and deed of the corporation, by it voluntarily executed.

12. In the case of natural persons acting as custodian pursuant to chapter 565B or any other Uniform Transfers to Minors Act:

On this day of (month), (year), before me, the undersigned, a Notary Public in and for said State, personally appeared, to me known to be the person named in and who executed the foregoing instrument, and acknowledged that the custodian executed the instrument as custodian for (name of minor), under the (State) Uniform Transfers to Minors Act, as the voluntary act and deed of the person and of the custodian.

13. In the case of corporations or national banking associations acting as custodians pursuant to chapter 565B or any other Uniform Transfers to Minors Act:

On this day of (month), (year), before me, the undersigned, a Notary Public in and for said State, personally appeared and, to me personally known, who, by me duly sworn, did say that they are the and, respectively, of the Corporation executing the foregoing instrument; that the instrument was signed on behalf of the Corporation by authority of its Board of Directors; that and acknowledged the execution of the instrument as custodian of (name of minor), under the (State) Uniform Transfers to Minors Act, to be the voluntary act and deed of the person and of the custodian.

(In all cases add a stamp or seal as provided in section 9E.6A and a signature and title of the officer taking the acknowledgment, and strike from between the parentheses the word or clause not used, as the case may be.)

Any instrument affecting real estate situated in this state which has been or may be acknowledged or proved in a foreign state or country and in conformity with the laws of that foreign state or country, shall be deemed as good and valid in law as though acknowledged or proved in conformity with the existing laws of this state.

2001 Acts, ch 38, §7, 8; 2001 Acts, ch 176, §45, 46, 76
2001 amendments take effect January 1, 2002; 2001 Acts, ch 176, §45,

46
Unnumbered paragraph 1 amended
Subsection 13, unnumbered paragraph 3 amended

558.45 Notation of assignment or release on index.

Where any mortgage, contract, or other instrument constituting an encumbrance upon real es-

tate shall be assigned or released by a separate instrument, it shall be the duty of the recorder to make a notation where the instrument was originally indexed, indicating the nature of such assignment or release and a document reference number of the record where the same is recorded.

2001 Acts, ch 44, §22
Section amended

558.49 Index records.

The recorder must keep index records to show the following:

1. Each grantor.
2. Each grantee.
3. The time when the instrument was filed.
4. The date of the instrument.
5. The nature of the instrument.
6. The document reference number where the record of the instrument may be found.
7. The description of the real estate conveyed.

2001 Acts, ch 44, §23, 24
Unnumbered paragraph 1 amended
Subsection 6 amended

558.50 Index for affidavits. Repealed by 2001 Acts, ch 44, § 33.

558.51 Separate indexes required. Repealed by 2001 Acts, ch 44, § 33.

558.52 Alphabetical arrangement.

The entries shall show the names of the respective grantors and grantees, arranged in alphabetical order. When the instrument is executed by a personal representative, guardian, referee, commissioner, receiver, sheriff, or other person acting in a representative capacity, the recorder shall enter upon the index the name and representative capacity of each person executing the instrument and the owner of the property if disclosed in the instrument.

2001 Acts, ch 44, §25
Section amended

558.53 City lot deeds and mortgages. Repealed by 2001 Acts, ch 44, § 33.

558.54 Deeds covering both lands and lots. Repealed by 2001 Acts, ch 44, § 33.

558.55 Filing and indexing — constructive notice.

The recorder must endorse upon every instrument properly filed for record in the recorder's office, the day, hour, and minute of the filing, and enter in the index the entries required to be entered, except the document reference number where the complete record will appear, and the filing and indexing shall constitute constructive notice to all persons of the rights of the grantees conferred by

the instruments.

2001 Acts, ch 44, §26
Section amended

558.57 Entry on auditor's transfer books.

The recorder shall not record any deed, real estate installment contract, or other instrument unconditionally conveying real estate until the proper entries have been made upon the transfer books in the auditor's office, and endorsement made upon the deed, real estate installment contract, or other instrument properly dated and officially signed, in substantially the following form:

Entered upon transfer books and for taxation this day of (month), (year).
My fee \$ collected by recorder.

.....
Auditor.

2001 Acts, ch 143, §5
Unnumbered paragraph 1 amended

558.58 Recorder to collect and deliver to auditor.

1. At the time of filing a deed, real estate installment contract, or other instrument mentioned in section 558.57, the recorder shall collect from the person filing the deed, real estate installment contract, or instrument the recording fee provided by law and the auditor's transfer fee, except as provided in subsection 2. The recorder shall deliver the deed, real estate installment contract, or instrument to the county auditor, after endorsing upon the instrument the following:

Filed for record, indexed, and delivered to the county auditor this day of (month), . . . (year), at o'clock . . . m.
Recorder's and auditor's fee \$ paid.

.....
Recorder.

2. When the person required to pay a fee relating to a real estate transaction is a governmental subdivision or agency, the recorder, at the request of the governmental subdivision or agency, shall bill the governmental subdivision or agency for the fees required to be paid. The governmental subdivision or agency shall pay the fees and taxes due within thirty days after the date of filing.

2001 Acts, ch 143, §6
Subsection 1, unnumbered paragraph 1 amended

558.59 Final record.

Every instrument shall be recorded as soon as practicable, after which the recorder shall complete the entries to show the document reference number where the record is to be found.

2001 Acts, ch 44, §27
Section amended

CHAPTER 560

OCCUPYING CLAIMANTS

Eviction or distress for rent during military service;
2001 Acts, 2nd Ex, ch 1, §29, 30, 35, 36

CHAPTER 562

OWNER-LESSOR AND TENANT-LESSEE

Eviction or distress for rent during military service; termination of leases;
2001 Acts, 2nd Ex, ch 1, §29, 30, 33, 35, 36

CHAPTER 562A

UNIFORM RESIDENTIAL LANDLORD AND TENANT LAW

Eviction or distress for rent during military service; termination of leases;
2001 Acts, 2nd Ex, ch 1, §29, 30, 33, 35, 36

CHAPTER 562B

MANUFACTURED HOME COMMUNITIES OR MOBILE HOME PARKS RESIDENTIAL LANDLORD AND TENANT LAW

Eviction or distress for rent during military service; termination of leases;
2001 Acts, 2nd Ex, ch 1, §29, 30, 33, 35, 36

562B.1 Short title.

This chapter shall be known and may be cited as the “*Manufactured Home Communities or Mobile Home Parks Residential Landlord and Tenant Act*”.

2001 Acts, ch 153, §16
Terminology change applied

562B.2 Purposes.

Underlying purposes and policies of this chapter are:

1. To simplify, clarify and establish the law governing the rental of manufactured or mobile home spaces and rights and obligations of landlord and tenant.

2. To encourage landlord and tenant to maintain and improve the quality of manufactured or mobile home living.

2001 Acts, ch 153, §15; 2001 Acts, ch 176, §80
Terminology change applied

562B.7 General definitions.

Subject to additional definitions contained in subsequent sections of this chapter which apply to specific sections thereof, and unless the context otherwise requires, in this chapter:

1. “*Building and housing codes*” include any law, ordinance, or governmental regulation concerning fitness for habitation, or the construction, maintenance, operation, occupancy, use, or ap-

pearance of any manufactured home community or mobile home park, dwelling unit, or manufactured or mobile home space.

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 which is a landlord, owner, manager, or constructive agent pursuant to section 562B.14.

3. “*Dwelling unit*” excludes real property used to accommodate a manufactured or mobile home.

4. “*Landlord*” means the owner, lessor, or sublessor of a manufactured home community or a mobile home park and it also means a manager of the manufactured home community or a mobile home park who fails to disclose as required by section 562B.14.

5. “*Manufactured home community*” means the same as land-leased community defined in sections 335.30A and 414.28A.

6. “*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. References

in this chapter to “mobile home” include “manufactured homes” and “modular homes” as those terms are defined in section 435.1, if the manufactured homes or modular homes are located in a manufactured home community or a mobile home park.

7. “Mobile home park” shall mean any site, lot, field or tract of land upon which three or more mobile homes, manufactured homes, or modular homes or a combination 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.

8. “Mobile home space” means a parcel of land for rent which has been designed to accommodate a mobile home and provide the required sewer and utility connections.

9. “Owner” means one or more persons, jointly or severally, in whom is vested all or part of the legal title to property or all or part of the beneficial ownership and a right to present use and enjoyment of the manufactured home community or the mobile home park. The term includes a mortgagee in possession.

10. “Rent” means a payment to be made to the landlord under the rental agreement.

11. “Rental agreement” means agreements, written or those implied by law, and valid rules and regulations adopted under section 562B.19 embodying the terms and conditions concerning the use and occupancy of a mobile home space.

12. “Rental deposit” means a deposit of money to secure performance of a mobile home space rental agreement under this chapter other than a deposit which is exclusively in advance payment of rent.

13. “Tenant” means a person entitled under a rental agreement to occupy a mobile home space to the exclusion of others.

2001 Acts, ch 153, §13
Section amended

562B.9 Notice.

A person “notifies” or “gives” a notice or notification to another by taking steps reasonably calculated to inform the other in ordinary course whether or not the other actually comes to know of it. In the case of the landlord, notice is received when it comes to the landlord’s attention or when it is delivered in hand or mailed by certified mail or restricted certified mail, as defined in section 618.15, whether or not the landlord signs a receipt for the notice, to the place of business of the landlord through which the rental agreement was made or at any place held out by the landlord as the place for receipt of the communication or delivered to any individual who is designated as an agent by section 562B.14. In the case of the tenant, notice is received when it comes to the tenant’s attention or when it is delivered in hand to the tenant or mailed by certified mail or restricted certified mail, as defined in section 618.15, whether or not the tenant signs a receipt for the notice,

to the tenant at the place held out by the tenant as the place for receipt of the communication or, in the absence of such designation, to the tenant’s last known place of residence other than the landlord’s mobile home or space.

Any notice required under this chapter, except a written notice of termination required by section 562B.25, subsection 1 or 2, a notice of termination and notice to quit under section 562B.25A, a notice to quit as required by section 648.3, or a petition for forcible entry and detainer pursuant to chapter 648, shall be deemed legally sufficient notice if made by posting at or delivering to each manufactured or mobile home space. The date of posting of the notice shall be written on the notice.

2001 Acts, ch 153, §14
Unnumbered paragraph 2 amended

562B.13 Rental deposits.

1. A landlord shall not demand or receive as a security deposit an amount or value in excess of two months’ rent.

2. All rental deposits shall be held by the landlord for the tenant, who is a party to the agreement, in a bank, credit union or savings and loan association which is insured by an agency of the federal government. Rental deposits shall not be commingled with the personal funds of the landlord. All rental deposits may be held in a trust account, which may be a common trust account and which may be an interest bearing account. Any interest earned on a rental deposit shall be the property of the landlord.

3. A landlord shall, within thirty days from the date of termination of the tenancy and receipt of the tenant’s mailing address or delivery instructions, return the rental deposit to the tenant or furnish to the tenant a written statement showing the specific reason for withholding of the rental deposit or any portion thereof. If the rental deposit or any portion of the rental deposit is withheld for the restoration of the manufactured or mobile home space, the statement shall specify the nature of the damages. The landlord may withhold from the rental deposit only such amounts as are reasonably necessary for the following reasons:

a. To remedy a tenant’s default in the payment of rent or of other funds due to the landlord pursuant to the rental agreement.

b. To restore the manufactured or mobile home space to its condition at the commencement of the tenancy, ordinary wear and tear excepted.

c. To remove, store, and dispose of a manufactured or mobile home if it is abandoned as defined in section 562B.27.

4. In an action concerning the rental deposit, the burden of proving, by a preponderance of the evidence, the reason for withholding all or any portion of the rental deposit shall be on the landlord.

5. A landlord who fails to provide a written statement within thirty days of termination of the tenancy and receipt of the tenant’s mailing ad-

dress or delivery instructions shall forfeit all rights to withhold any portion of the rental deposit. If no mailing address or instructions are provided to the landlord within one year from the termination of the tenancy the rental deposit shall revert to the landlord and the tenant will be deemed to have forfeited all rights to the rental deposit.

6. Upon termination of a landlord's interest in the manufactured home community or mobile home park, the landlord or the landlord's agent shall, within a reasonable time, transfer the rental deposit, or any remainder after any lawful deductions to the landlord's successor in interest and notify the tenant of the transfer and of the transferee's name and address or return the deposit, or any remainder after any lawful deductions to the tenant.

Upon the termination of the landlord's interest in the manufactured home community or mobile home park and compliance with the provisions of this subsection, the landlord shall be relieved of any further liability with respect to the rental deposit.

7. Upon termination of the landlord's interest in the manufactured home community or mobile home park, the landlord's successor in interest shall have all the rights and obligations of the landlord with respect to the rental deposits, except that if the tenant does not object to the stated amount within twenty days after written notice to the tenant of the amount of rental deposit being transferred or assumed, the obligations of the landlord's successor to return the deposit shall be limited to the amount contained in the notice. The notice shall contain a stamped envelope addressed to the landlord's successor and may be given by mail or by personal service.

8. The bad faith retention of a deposit by a landlord, or any portion of the rental deposit, in violation of this section shall subject the landlord to punitive damages not to exceed two hundred dollars in addition to actual damages.

2001 Acts, ch 153, §15, 16; 2001 Acts, ch 176, §80
Terminology changes applied

562B.14 Disclosure and tender of written rental agreement.

1. The landlord shall offer the tenant the opportunity to sign a written agreement for a mobile home space.

2. The landlord or any person authorized to enter into a rental agreement on the landlord's behalf shall disclose to the tenant in writing at or before entering into the rental agreement the name and address of:

a. The person authorized to manage the manufactured home community or mobile home park.

b. The owner of the manufactured home community or mobile home park or a person authorized to act for and on behalf of the owner for the purpose of service of process and for the purpose of receiving and receipting for notices and demands.

3. The information required to be furnished by

this section shall be kept current and refurbished to the tenant upon the tenant's request. When there is a new owner or operator this section extends to and is enforceable against any successor landlord, owner or manager.

4. A person who fails to comply with subsections 1 and 2 becomes an agent of each person who is a landlord for the following purposes:

a. Service of process and receiving and receipting for notices and demands.

b. Performing the obligations of the landlord under this chapter and under the rental agreement and expending or making available for the purpose all rent collected from the manufactured home community or mobile home park.

5. If there is a written rental agreement, the landlord must tender and deliver a signed copy of the rental agreement to the tenant and the tenant must sign and deliver to the landlord one fully executed copy of such rental agreement within ten days after the agreement is executed. Noncompliance with this subsection shall be deemed a material noncompliance by the landlord or the tenant, as the case may be, of the rental agreement.

6. The landlord or any person authorized to enter into a rental agreement on the landlord's behalf shall provide a written explanation of utility rates, charges and services to the prospective tenant before the rental agreement is signed unless the utility charges are paid by the tenant directly to the utility company.

7. Each tenant shall be notified, in writing, of any rent increase at least sixty days before the effective date. Such effective date shall not be sooner than the expiration date of the original rental agreement or any renewal or extension thereof.

2001 Acts, ch 153, §16
Terminology change applied

562B.15 Landlord to deliver possession of mobile home space.

At the commencement of the term the landlord shall deliver possession of the mobile home space to the tenant in compliance with the rental agreement and section 562B.16. The landlord may bring an action for possession against a person wrongfully in possession and may recover the damages provided in section 562B.30, subsection 2.

2001 Acts, ch 153, §16
Term to be changed under 2001 Acts, ch 153, §16, did not exist and change could not be implemented; corrective legislation is pending
Section amended; section text not changed; footnote added

562B.16 Landlord to maintain fit premises.

1. The landlord shall:

a. Comply with the requirements of all applicable city, county and state codes materially affecting health and safety which are primarily imposed upon the landlord.

b. Make all repairs and do whatever is necessary to put and keep the mobile home space in a fit and habitable condition.

c. Keep all common areas of the manufactured home community or mobile home park in a clean and safe condition.

d. Maintain in good and safe working order and condition all facilities supplied or required to be supplied by the landlord.

e. Provide for removal of garbage, rubbish, and other waste from the manufactured home community or mobile home park.

f. Furnish outlets for electric, water and sewer services.

2. A landlord shall not impose any conditions of rental or occupancy which restrict the tenant in the choice of a seller of fuel, furnishings, goods, services or mobile homes connected with the rental or occupancy of a mobile home space unless such condition is necessary to protect the health, safety, aesthetic value or welfare of mobile home tenants in the manufactured home community or park. The landlord may impose reasonable requirements designed to standardize methods of utility connection and hookup. If any such conditions are imposed which result in charges for such goods or services, the charges shall not exceed the actual cost incurred in providing the tenant with such goods or services.

2001 Acts, ch 153, §16
Terminology change applied

562B.17 Limitation of liability.

1. A landlord who conveys a manufactured home community or mobile home park in a good faith sale to a bona fide purchaser is relieved of liability under the rental agreement and this chapter as to events occurring subsequent to written notice to the tenant of the conveyance.

2. A manager of a manufactured home community or mobile home park is relieved of liability under the rental agreement and this chapter as to events occurring after written notice to the tenant of the termination of the person's management, except such notice shall not terminate any agreement or legal liability arising prior to the notice.

2001 Acts, ch 153, §16
Terminology change applied

562B.18 Tenant to maintain mobile home space — notice of vacating.

A tenant shall maintain the mobile home space in as good a condition as when the tenant took possession and shall:

1. Comply with all obligations primarily imposed upon tenants by applicable provisions of city, county and state codes materially affecting health and safety.

2. Keep that part of the manufactured home community or mobile home park that the tenant occupies and uses reasonably clean and safe.

3. Dispose from the tenant's mobile home space all rubbish, garbage and other waste in a clean and safe manner.

4. Not deliberately or negligently destroy, de-

face, damage, impair or remove any part of the manufactured home community or mobile home park or knowingly permit any person to do so.

5. Act and require other persons in the manufactured home community or mobile home park with the tenant's consent to act in a manner that will not disturb the tenant's neighbors' peaceful enjoyment of the manufactured home community or mobile home park.

6. Maintain in good and safe working order all utility lines, pipes, and cables extending from the mobile home to outlets provided by the landlord for electric, water, sewer, and other services. This subsection shall not apply to a tenant who does not own the mobile home.

2001 Acts, ch 153, §16
Terminology change applied

562B.19 Rules and regulations.

1. A landlord may adopt rules or regulations, however described, concerning the tenant's use and occupancy of the manufactured home community or mobile home park. Such rules or regulations are enforceable against the tenant only if they are written and if:

a. Their purpose is to promote the convenience, safety or welfare of the tenants in the manufactured home community or mobile home park, to preserve the landlord's property from abuse, to make a fair distribution of services and facilities held out for the tenants generally, or to facilitate manufactured home community or mobile home park management.

b. They are reasonably related to the purpose for which adopted.

c. They apply to all tenants in the manufactured home community or mobile home park in a fair manner.

d. They are sufficiently explicit in prohibition, direction or limitation of the tenant's conduct to fairly inform that person of what must or must not be done to comply.

e. They are not for the purpose of evading the obligations of the landlord.

f. The prospective tenant is given a copy of them before the rental agreement is entered into.

2. Notice of all such additions, changes, deletions or amendments shall be given to all mobile home tenants thirty days before they become effective. Any rule or condition of occupancy which is unfair and deceptive or which does not conform to the requirements of this chapter shall be unenforceable. A rule or regulation adopted after the tenant enters into the rental agreement is enforceable against the tenant only if it does not work a substantial modification of that person's rental agreement.

3. A landlord shall not:

a. Deny rental unless the tenant or prospective tenant cannot conform to manufactured home community or park rules and regulations.

b. Require any person as a precondition to rent-

ing, leasing or otherwise occupying or removing from a mobile home space in a manufactured home community or mobile home park to pay an entrance or exit fee of any kind unless for services actually rendered or pursuant to a written agreement.

c. Deny any resident of a manufactured home community or mobile home park the right to sell that person's mobile home at a price of the person's own choosing, but may reserve the right to approve the purchaser of such mobile home as a tenant but such permission may not be unreasonably withheld, provided however, that the landlord may, in the event of a sale to a third party, in order to upgrade the quality of the manufactured home community or mobile home park, require that any mobile home in a rundown condition or in disrepair be removed from the manufactured home community or park within sixty days.

d. Exact a commission or fee with respect to the price realized by the tenant selling the tenant's mobile home, unless the manufactured home community or park owner or operator has acted as agent for the mobile home owner pursuant to a written agreement.

e. Require tenant to furnish permanent improvements which cannot be removed without damage thereto or to the mobile home space by tenant at expiration of the rental agreement.

f. Prohibit meetings between tenants in the manufactured home community or mobile home park relating to mobile home living and affairs in the manufactured home community or park community or recreational hall if such meetings are held at reasonable hours and when the facility is not otherwise in use.

2001 Acts, ch 153, §16
Terminology change applied

562B.22 Noncompliance by the landlord.

1. Except as provided in this chapter, if there is a material noncompliance by the landlord with the rental agreement, the tenant may 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 thirty days after receipt of the notice if the breach is not remedied in fourteen days. If there is a noncompliance by the landlord with section 562B.16 materially affecting health and safety, the tenant may 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 thirty days after receipt of the notice if the breach is not remedied in fourteen days. The rental agreement shall terminate and the mobile home space shall be vacated 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 the landlord adequately remedies the breach prior to the date specified in the notice, the rental agreement

will not terminate.

b. 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 in the manufactured home community or mobile home park 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 with section 562B.16.

3. The remedy provided in subsection 2 of this section is in addition to any right of the tenant arising under subsection 1 of this section.

2001 Acts, ch 153, §16
Terminology change applied

562B.23 Failure to deliver possession.

1. If the landlord fails to deliver physical possession of the mobile home space to the tenant as provided in section 562B.15, rent abates until possession is delivered and the tenant may do either of the following:

a. Upon written notice to the landlord, terminate the rental agreement and at that time the landlord shall return all deposits.

b. Demand performance of the rental agreement by the landlord and, if the tenant elects, maintain an action for possession of the mobile home space against the landlord and recover the damages sustained by the tenant plus reasonable attorney's fees and court costs.

2. If the landlord delivers physical possession to the tenant but fails to comply with section 562B.16 at the time of delivery, rent shall not abate. The tenant may also proceed with the remedies provided for in section 562B.22.

2001 Acts, ch 153, §16
Term to be changed under 2001 Acts, ch 153, §16, did not exist and change could not be implemented; corrective legislation is pending
Section amended; section text not changed; footnote added

562B.24 Tenant's remedies for landlord's unlawful ouster, exclusion or diminution of services.

If the landlord unlawfully removes or excludes the tenant from the manufactured home community or mobile home park or willfully diminishes services to the tenant by interrupting or causing the interruption of electric, gas, water or other essential service to the tenant, the tenant may recover possession, require the restoration of essential services or terminate the rental agreement and, in either case, recover an amount not to exceed two months' periodic rent and twice the actual damages sustained by the tenant.

2001 Acts, ch 153, §16
Terminology change applied

562B.32 Retaliatory conduct prohibited.

1. Except as provided in this section, a landlord shall not retaliate by increasing rent or decreasing services or by bringing or threatening to bring an action for possession or by failing to re-

new a rental agreement after any of the following:

a. The tenant has complained to a governmental agency charged with responsibility for enforcement of a building or housing code of a violation applicable to the manufactured home community or mobile home park materially affecting health and safety. For this subsection to apply, a complaint filed with a governmental body must be in good faith.

b. The tenant has complained to the landlord of a violation under section 562B.16.

c. The tenant has organized or become a member of a tenant's union or similar organization.

d. For exercising any of the rights and remedies pursuant to this chapter.

2. If the landlord acts in violation of subsection 1 of this section, the tenant is entitled to the remedies provided in section 562B.24 and has a defense in an action for possession. In an action by or against the tenant, evidence of a complaint within six months prior to the alleged act of retaliation creates a presumption that the landlord's conduct

was in retaliation. The presumption does not arise if the tenant made the complaint after notice of termination of the rental agreement. For the purpose of this subsection, "presumption" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

3. Notwithstanding subsections 1 and 2 of this section, a landlord may bring an action for possession if either of the following occurs:

a. The violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant or other person in the household or upon the premises with the tenant's consent.

b. The tenant is in default of rent three days after rent is due. The maintenance of the action does not release the landlord from liability under section 562B.22, subsection 2.

2001 Acts, ch 153, §16
Terminology change applied

CHAPTER 566

CEMETERY MANAGEMENT

566.35 Burial sites located on private property.

If a person notifies a governmental subdivision or agency of the existence within the jurisdiction of the governmental subdivision or agency of a burial site of the person's ancestor on property owned by another person, the owner of the proper-

ty shall permit the person reasonable ingress and egress for the purposes of visiting the burial site, and the governmental subdivision or agency shall notify the owner of this obligation.

2001 Acts, ch 44, §28
Subsection 2 stricken and former subsection 1 redesignated as unnumbered paragraph 1

CHAPTER 566A

CEMETERY REGULATION

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 chapter 523A 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.

Section not amended; internal reference change applied

566A.7 Commission or bonus unlawful.

It shall be unlawful for any organization subject to the provisions of this chapter to pay or offer to pay to, or for any person, firm or corporation to receive directly or indirectly a commission or bonus or rebate or other thing of value, for or in connection with the sale of any interment space, lot or part thereof, in any cemetery described in section 566A.1 of this chapter. The provisions of this section shall not apply to a person regularly employed and supervised by such organization or to a person, firm, corporation, or other entity licensed under chapter 523A that contracts with the cemetery to sell interment spaces or lots. The conduct of any person, firm, corporation, or other entity described in this section is the direct responsibility of the cemetery.

Section not amended; internal reference change applied

CHAPTER 570

LANDLORD'S LIEN

570.1 Lien created — perfection and priority — termination.

1. A landlord shall have a lien for the rent upon all crops grown upon the leased premises, and upon any other personal property of the tenant which has been used or kept thereon during the term and which is not exempt from execution.

2. In order to perfect a lien in farm products as defined in section 554.9102, which is created under this section, a landlord must file a financing statement as required by section 554.9308, subsection 2. Except as provided in chapters 571, 572, 579A, 579B, and 581, a perfected lien in the farm products has priority over a conflicting security interest or lien, including a security interest or lien that was perfected prior to the creation of the lien under this section, if the lien created in this section is perfected on either of the following dates:

a. Prior to July 1, 2001.

b. When the debtor takes possession of the leased premises or within twenty days after the debtor takes possession of the leased premises.

A financing statement filed to perfect a lien in the farm products must include a statement that it is filed for the purpose of perfecting a landlord's lien. Within twenty days after a landlord who has filed a financing statement receives a written demand, authenticated as provided in article 9 of chapter 554, from a tenant, the landlord shall file a termination statement, if the lien in the farm products has expired or if the tenant is no longer in possession of the leased premises and has performed all obligations under the lease.

2000 Acts, ch 1149, §176, 187

2000 amendments to this section are effective July 1, 2001; 2000 Acts, ch 1149, §187

Section amended

CHAPTER 570A

AGRICULTURAL SUPPLY DEALER'S LIEN

570A.4 Perfection of lien.

1. In order to perfect the lien created by section 570A.3, the agricultural supply dealer entitled to the lien shall file a verified lien statement with the office of the secretary of state. The lien statement may be filed at the time the agricultural chemical, seed, feed, or petroleum product is purchased or delivered but not later than thirty-one days after the first date on which payment is due under the terms of payment agreed to by the farmer and the

agricultural supply dealer. The lien statement shall disclose all of the following:

a. The name and address of the agricultural supply dealer claiming the lien.

b. An itemized declaration of the nature and retail cost of the agricultural chemical, seed, feed, or petroleum product which has been or may be furnished pursuant to the certified request or the combined certified request and waiver of confidentiality.

c. The last date through which the agricultural supply dealer claiming the lien has agreed to furnish agricultural chemicals, seed, feed, or petroleum products as stated in the certified request or the combined certified request and waiver of confidentiality.

d. The first date on which payment was due, according to the terms of payment, from the farmer for whom the agricultural chemical, seed, feed, or petroleum product was furnished or may be furnished pursuant to the certified request or the combined certified request and waiver of confidentiality.

e. The name and address of the farmer for whom the agricultural chemical, seed, feed, or petroleum product was furnished or may be furnished pursuant to the certified request or the combined certified request and waiver of confidentiality.

f. A description of the real property on which the crops to which the lien attaches are growing or are to be grown or the description of the livestock to which the lien attaches.

2. The secretary of state shall enter on the lien statement the time of day and date of filing.

3. If an agricultural supply dealer fails to file the lien statement within the time required by subsection 1, the lien and all benefits under this chapter are forfeited.

4. The secretary of state shall note the filing of a lien statement under this section in the manner provided by chapter 554, the uniform commercial code, and shall charge a fee as provided under section 554.9525.

5. An agricultural supply dealer filing a veri-

fied lien statement shall request from the secretary of state a certificate showing any effective financing statement or verified lien statements naming the debtor and the crops or livestock to which the lien attaches. The agricultural supply dealer shall notify by registered or certified mail, return receipt requested, any other creditor who holds a lien or security interest which is subordinate or equal to the agricultural supply dealer's lien.

2000 Acts, ch 1149, §177, 187
2000 amendment to subsection 4 is effective July 1, 2001; 2000 Acts, ch 1149, §187
Subsection 4 amended

570A.6 Enforcement of lien.

The holder of a lien perfected under this chapter may enforce the lien in the manner provided for agricultural liens pursuant to chapter 554, article 9, part 6, for the enforcement of security interests. For purposes of enforcement of the lien, the lienholder is deemed to be the secured party, and the farmer for whom the agricultural chemical, seed, feed, or petroleum product was furnished is deemed to be the debtor, and each has the respective rights and duties of a secured party and a debtor as provided in chapter 554, article 9, part 6. Where a right or duty under chapter 554, article 9, part 6, is contingent upon the existence of express language in a security agreement, or may be waived by express language in a security agreement, the requisite language is deemed not to exist for purposes of enforcement of the lien created by this chapter.

2000 Acts, ch 1149, §178, 187
2000 amendments to this section are effective July 1, 2001; 2000 Acts, ch 1149, §187
Section amended

CHAPTER 571

THRESHER'S OR CORNSHELLER'S LIEN

571.5 Enforcement of lien.

A lien as provided in this chapter may be enforced in the manner provided for agricultural liens pursuant to the uniform commercial code,

chapter 554, article 9, part 6.

2000 Acts, ch 1149, §179, 187
2000 amendments to this section are effective July 1, 2001; 2000 Acts, ch 1149, §187
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 provided feed and care by another person.

3. "Custom cattle feedlot operator" means the owner of a custom cattle feedlot or the owner's per-

sonal representative.

4. "Feedlot" means a lot, yard, corral, building, or other area in which cattle are confined and fed and maintained for forty-five days or more in any twelve-month period.

5. "Lien" means a custom cattle feedlot lien created in section 579A.2.

6. "Personal representative" means a person who is authorized by the owner of a custom cattle feedlot to act on behalf of the owner, including by

executing an agreement, managing a custom cattle feedlot, filing a financing statement to perfect a lien, and enforcing a lien under this chapter.

7. “Processor” means the same as defined in section 9H.1.

2001 Acts, ch 25, §1, 2

NEW subsection 5 and former subsections 5 and 6 renumbered as 6 and

7

Subsection 6 amended

579A.2 Establishment of lien — priority.

1. A custom cattle feedlot lien is created. The lien is an agricultural lien as provided in section 554.9302.

2. 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 cattle at the custom cattle feedlot pursuant to a written or oral agreement by the custom cattle feedlot operator and the person who owns the cattle, which may be enforced as provided in section 579A.3. The custom cattle feedlot operator is a secured party and the owner of the cattle is a debtor for purposes of chapter 554, article 9.

3. A custom cattle feedlot lien becomes effective at the time the cattle arrive at the custom cattle feedlot. In order to perfect the lien, the custom cattle feedlot operator must file a financing statement in the office of the secretary of state as provided in section 554.9308 within twenty days after the cattle arrive at the custom cattle feedlot.

a. The financing statement shall substantially meet the requirements of section 554.9502, subsection 1, and include all applicable information described in section 554.9516.

b. The lien terminates one year after the cattle have left the custom cattle feedlot. Section 554.9515 shall not apply to a financing statement perfecting the lien. The lien may be terminated by the custom cattle feedlot operator who files a termination statement as provided in chapter 554, article 9.

4. Filing a financing statement as provided in this section substantially satisfies all requirements for perfection of an agricultural lien as provided in chapter 554, article 9.

5. *a.* Except as provided in this paragraph, a custom cattle feedlot lien that is perfected under this section is superior to and shall have priority over a conflicting lien or security interest in the

cattle, including a lien or security interest that was perfected prior to the perfection of the custom cattle feedlot lien. However, a custom cattle feedlot lien shall not be superior to a veterinarian’s lien created under chapter 581, that is perfected as an agricultural lien as provided in chapter 554, article 9.

b. A custom cattle feedlot lien that is effective but not perfected under this section has priority as provided in section 554.9322.

2001 Acts, ch 25, §3

Section amended

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 enforcement of an agricultural lien as provided in chapter 554, article 9, part 6. 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.

2000 Acts, ch 1149, §180, 187

2000 amendments to this section are effective July 1, 2001; 2000 Acts, ch 1149, §187

Unnumbered paragraph 1 amended

579A.4 Waivers unenforceable.

A waiver of a right created by this chapter, including but not limited to a waiver of the right to file a financing statement pursuant to this chapter, is void and unenforceable. This section does not affect other provisions of a contract, including a production contract or a related document, policy, or agreement which can be given effect without the voided provision.

2001 Acts, ch 25, §4

Section amended

579A.5 Alternate lien procedure.

A person who is a custom cattle feedlot operator may file a financing statement and enforce a lien as a contract producer under this chapter or chapter 579B, but not both.

2001 Acts, ch 25, §5

Section amended

CHAPTER 579B

COMMODITY PRODUCTION CONTRACT LIEN

579B.1 Definitions.

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

1. “Commodity” means livestock, raw milk, or a crop.

2. “Continuous arrival” means the arrival of livestock at a contract livestock facility on a monthly basis or more frequently as provided in a production contract.

3. “Contract crop field” means farmland where

a crop is produced according to a production contract executed pursuant to section 579B.2 by a contract producer who owns or leases the farmland.

4. “*Contract livestock facility*” means an animal feeding operation as defined in section 455B.161, in which livestock or raw milk is produced according to a production contract executed pursuant to section 579B.2 by a contract producer who owns or leases the animal feeding operation. “*Contract livestock facility*” includes a confinement feeding operation as defined in section 455B.161, an open feedlot, or an area which is used for the raising of crops or other vegetation and upon which livestock is fed for slaughter or is allowed to graze or feed.

5. “*Contract operation*” means a contract livestock facility or contract crop field.

6. “*Contract producer*” means a person who owns or leases a contract operation and who produces a commodity under a production contract executed pursuant to section 579B.2.

7. “*Contractor*” means a person who owns a commodity at the time that the commodity is under the authority of the contract producer as provided in section 579B.3 pursuant to a production contract executed pursuant to section 579B.2.

8. *a.* “*Crop*” means a plant used for food, animal feed, fiber, or oil, if the plant is classified as a forage or cereal plant, including but not limited to alfalfa, barley, buckwheat, corn, flax, forage, millet, oats, popcorn, rye, sorghum, soybeans, sunflowers, wheat, and grasses used for forage or silage.

b. A “*crop*” does not include trees or nuts or fruit grown on trees; sod; shrubs; greenhouse plants; or plants or plant parts produced for pre-commercial, experimental, or research purposes.

9. “*Farmland*” means agricultural land suitable for use in farming as defined in section 9H.1.

10. “*Lien*” means a commodity production contract lien created in section 579B.3.

11. “*Livestock*” means beef cattle, dairy cattle, sheep, or swine.

12. “*Open feedlot*” means the same as defined in section 202.1.

13. “*Personal representative*” means a person who is authorized by a contract producer to act on behalf of the contract producer, including by executing an agreement, managing a contract operation, or filing a financing statement perfecting a lien, and enforcing a lien as provided in this chapter.

14. “*Processor*” means a person engaged in the business of manufacturing goods from commodities, including by slaughtering or processing livestock, processing raw milk, or processing crops.

15. “*Produce*” means to do any of the following:

a. Provide feed or services relating to the care and feeding of livestock. If the livestock is dairy cattle, “*produce*” includes milking the dairy cattle and storing raw milk at the contract producer’s contract livestock facility.

b. Provide for planting, raising, harvesting,

and storing a crop. “*Produce*” includes preparing the soil for planting and nurturing the crop by the application of fertilizers or soil conditioners as defined in section 200.3 or pesticides as defined in section 206.2.

16. “*Production contract*” means an oral or written agreement executed pursuant to section 579B.2 that provides for the production of a commodity by a contract producer.

2001 Acts, ch 25, §6, 7
NEW subsection 2 and former subsections 2 – 8 renumbered as 3 – 9
NEW subsection 10 and former subsections 9 – 14 renumbered as 11 – 16
Subsection 13 amended

579B.3 Establishment of lien — priority.

1. A commodity production contract lien is created. The lien is an agricultural lien as provided in section 554.9302.

2. A contract producer who is a party to a production contract executed pursuant to section 579B.2 shall have a lien as provided in this section. The contract producer is a secured party and the owner of the commodity is a debtor for purposes of chapter 554, article 9. The amount of the lien shall be the amount owed to the contract producer pursuant to the terms of the production contract, which may be enforced as provided in section 579B.5.

3. If the production contract is for the production of livestock or raw milk, all of the following shall apply:

a. For livestock, the lien shall apply to all of the following:

(1) If the livestock is not sold or slaughtered by the contractor, the lien shall be on the livestock.

(2) If the livestock is sold by the contractor, the lien shall be on cash proceeds from the sale. For purposes of this paragraph, cash held by the contractor shall be deemed to be cash proceeds from the sale regardless of whether it is identifiable cash proceeds.

(3) If the livestock is slaughtered by the contractor, the lien shall be on any property of the contractor that may be subject to a security interest as provided in section 554.9109.

b. For raw milk, the lien shall apply to all of the following:

(1) If the raw milk is not sold or processed by the contractor, the lien shall be on the raw milk.

(2) If the raw milk is sold by the contractor, the lien shall be on cash proceeds from the sale. For purposes of this paragraph, cash held by the contractor shall be deemed to be cash proceeds from the sale regardless of whether it is identifiable cash proceeds.

(3) If the raw milk is processed by the contractor, the lien shall be on any property of the contractor that may be subject to a security interest as provided in section 554.9109.

4. If the production contract is for the production of crops, all of the following shall apply:

a. If the crop is not sold or processed by the contractor, the lien shall be on the crop.

b. If the crop is sold by the contractor, the lien shall be on cash proceeds from the sale. For purposes of this paragraph, cash held by the contractor shall be deemed to be cash proceeds from the sale regardless of whether it is identifiable cash proceeds.

c. If the crop is processed by the contractor, the lien shall be on any property of the contractor that may be subject to a security interest as provided in section 554.9109.

2000 Acts, ch 1149, §181 – 183, 187; 2001 Acts, ch 25, §8 – 10
2000 amendments are effective July 1, 2001; 2000 Acts, ch 1149, §187
Section amended and renumbered editorially

579B.4 Perfecting the lien — filing requirements.

1. A commodity production contract lien becomes effective and is perfected as follows:

a. For a lien arising out of producing livestock or raw milk, the lien becomes effective the day that the livestock first arrives at the contract livestock facility. In order to perfect the lien, the contract producer must file a financing statement in the office of the secretary of state as provided in section 554.9308. Unless the production contract provides for continuous arrival, the contract producer must file the financing statement for the livestock within forty-five days after the livestock's arrival. If the production contract provides for continuous arrival, the contract producer must file the financing statement for the livestock within one hundred eighty days after the livestock's arrival. The lien terminates one year after the livestock is no longer under the authority of the contract producer. For purposes of this section, livestock is no longer under the authority of the contract producer when the livestock leaves the contract livestock facility. Section 554.9515 shall not apply to a financing statement perfecting the lien. The lien may be terminated by the contract producer who files a termination statement as provided in chapter 554, article 9.

b. For a lien arising out of producing a crop, the lien becomes effective the day that the crop is first planted. In order to perfect the lien, the contract producer must file a financing statement in the office of the secretary of state as provided in section 554.9308. The contract producer must file a financing statement for the crop within forty-five days after the crop is first planted. The lien termi-

nates one year after the crop is no longer under the authority of the contract producer. For purposes of this section, a crop is no longer under the authority of the contract producer when the crop or a warehouse receipt issued by a warehouse operator licensed under chapter 203C for grain from the crop is no longer under the custody or control of the contract producer. Section 554.9515 shall not apply to a financing statement perfecting the lien. The lien may be terminated by the contract producer who files a termination statement as provided in chapter 554, article 9.

2. The financing statement shall substantially meet the requirements of section 554.9502, subsection 1, and include all applicable information described in section 554.9516.

3. Filing a financing statement as provided in this section satisfies all requirements for perfection of an agricultural lien as provided in chapter 554, article 9.

4. a. Except as provided in this paragraph, a commodity production contract lien that is perfected under this section is superior to and shall have priority over a conflicting lien or security interest in the commodity, including a lien or security interest that was perfected prior to the perfection of the commodity production contract lien under this chapter. However, a commodity production contract lien shall not be superior to a veterinarian's lien created under chapter 581 that is perfected as an agricultural lien.

b. A commodity production contract lien that is effective but not perfected under this section has priority as provided in section 554.9322.

2001 Acts, ch 25, §11
Section amended

579B.5 Enforcement.

Before a commodity leaves the authority of the contract producer as provided in section 579B.3, the contract producer may enforce a lien created in that section in the manner provided for the enforcement of an agricultural lien as provided in chapter 554, article 9, part 6. After the commodity is no longer under the authority of the contract producer, the contract producer may enforce the lien in the manner provided in chapter 554, article 9, part 6.

2000 Acts, ch 1149, §184, 187
2000 amendments to this section are effective July 1, 2001; 2000 Acts, ch 1149, §187
Section amended

CHAPTER 595

MARRIAGE

595.5 Name change adopted.

1. A party may indicate on the application for a marriage license the adoption of a name change. The names used on the marriage license shall become the legal names of the parties to the marriage. The marriage license shall contain a statement that when a name change is requested and

affixed to the marriage license, the new name is the legal name of the requesting party.

2. An individual shall have only one legal name at any one time.

2001 Acts, ch 143, §7
Subsection 2 stricken and former subsection 3 renumbered as 2

CHAPTER 598

DISSOLUTION OF MARRIAGE AND DOMESTIC RELATIONS

598.7A Mediation.

1. The district court may, on its own motion or on the motion of any party, order the parties to participate in mediation in any dissolution of marriage action or other domestic relations action. Mediation performed under this section shall comply with the provisions of chapter 679C. The provisions of this section shall not apply if the action involves a child support or medical support obligation enforced by the child support recovery unit. The provisions of this section shall not apply to actions which involve domestic abuse pursuant to chapter 236. The provisions of this section shall not affect a judicial district's or court's authority to order settlement conferences pursuant to rules of civil procedure. The court shall, on application of a party, grant a waiver from any court-ordered mediation under this section if the party demonstrates that a history of domestic abuse exists as specified in section 598.41, subsection 3, paragraph "j".

2. The supreme court shall establish a dispute resolution program in family law cases that includes the opportunities for mediation and settlement conferences. Any judicial district may implement such a dispute resolution program, subject to the rules prescribed by the supreme court.

3. The supreme court shall prescribe rules for the mediation program, including the circumstances under which the district court may order participation in mediation.

4. Any dispute resolution program shall comply with all of the following standards:

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

b. The parties may choose the mediator, or the court shall appoint a mediator. A court-appointed mediator shall meet the qualifications established by the supreme court.

c. Parties to the mediation have the right to advice and presence of counsel at all times.

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

e. The costs of mediation shall be borne by the parties, as agreed to by the parties, or as ordered by the court, and may be taxed as court costs. Mediation shall be provided on a sliding fee scale

for parties who are determined to be indigent pursuant to section 815.9.

5. The supreme court shall prescribe qualifications for mediators under this section on or before January 1, 2001. The qualifications shall include but are not limited to the ethical standards to be observed by mediators. The qualifications shall not include a requirement that the mediator be licensed to practice any particular profession.

2000 Acts, ch 1159, §2, 4; 2000 Acts, ch 1232, §86
Legislative intent; 2000 Acts, ch 1159, §1
2000 amendments to subsections 1 and 2 and adding subsections 3 and 4 take effect July 1, 2001; 2000 Acts, ch 1159, §4; 2000 Acts, ch 1232, §86
Subsections 1 and 2 stricken and rewritten
NEW subsections 3 and 4

598.13 Financial statements filed.

1. Both parties shall disclose their financial status. A showing of special circumstances shall not be required before the disclosure is ordered. A statement of net worth set forth by affidavit on a form prescribed by the supreme court and furnished without charge by the clerk of the district court shall be filed by each party prior to the dissolution hearing. However, the parties may waive this requirement upon application of both parties and approval by the court.

Failure to comply with the requirements of this subsection constitutes failure to make discovery as provided in rule of civil procedure 134.

2. The court may, in its discretion, order a trustee to provide, on behalf of a trust, information including, but not limited to, trust documents and financial statements relating to any beneficial interest a party to the pending action may have in the trust.

2001 Acts, ch 112, §1
Section amended

598.19A Mandatory course — parties to certain proceedings.

1. The court shall order the parties to any action which involves the issues of child custody or visitation to participate in a court-approved course to educate and sensitize the parties to the needs of any child or party during and subsequent to the proceeding within forty-five days of the service of notice and petition for the action or within forty-five days of the service of notice and application for modification of an order. Participation in the course may be waived or delayed by the court for good cause including, but not limited to, a default by any of the parties or a showing that the parties have previously participated in a court-approved course or its equivalent. Participation in the course is not required if the proceeding involves termination of parental rights of any of the parties. A final decree shall not be granted or a fi-

nal order shall not be entered until the parties have complied with this section, unless participation in the course is waived or delayed for good cause or is otherwise not required under this subsection.

2. Each party shall be responsible for arranging for participation in the course and for payment of the costs of participation in the course.

3. Each party shall submit certification of completion of the course to the court prior to the granting of a final decree or the entry of an order, unless participation in the course is waived or delayed for good cause or is otherwise not required under subsection 1.

4. If participation in the court-approved course is waived or delayed for good cause or is otherwise not required under this section, the court may order that the parties receive the information described in subsection 5 through an alternative format.

5. Each judicial district shall certify approved courses for parties required to participate in a course under this section. Approved courses may include those provided by a public or private entity. At a minimum and as appropriate, an approved course shall include information relating to the parents regarding divorce and its impact on the children and family relationship, parenting skills for divorcing parents, children's needs and coping techniques, and the financial responsibilities of parents following divorce.

6. In addition to the provisions of this section relating to the required participation in a court-approved course by the parties to an action as described in subsection 1, the court may require age-appropriate counseling for children who are involved in a dissolution of marriage action. The counseling may be provided by a public or private entity approved by the court. The costs of the counseling shall be taxed as court costs.

7. The supreme court may prescribe rules to implement this section.

2001 Acts, ch 112, §2, 3

Subsections 1 and 3 amended

NEW subsection 4 and former subsections 4 – 6 renumbered as 5 – 7

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, including ordering the parties to execute a quitclaim deed or ordering a change of title for tax purposes and delivery of the deed or change of title to the county recorder of the county in which each parcel of real estate is located. The county recorder shall record each quitclaim deed or change of title and shall collect the fee specified in section 331.507, subsection 2, paragraph "a", and the fee specified in section 331.604, subsection 1. The court may protect and promote the best interests of children of the par-

ties 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 reciprocity 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. Unless prohibited pursuant to 28 U.S.C. § 1738B, upon every judgment of annulment, dissolution, or separate maintenance, the court may order either parent or both parents to pay an amount reasonable and necessary for supporting a child. In establishing the amount of support, consideration shall be given to the responsibility of both parents to support and provide for the welfare of the minor child and of a child's need, whenever practicable, for a close relationship with both

parents. There shall be a rebuttable presumption that the amount of child support which would result from the application of the guidelines prescribed by the supreme court is the correct amount of child support to be awarded. A variation from the guidelines shall not be considered by a court without a record or written finding, based on stated reasons, that the guidelines would be unjust or inappropriate as determined under the criteria prescribed by the supreme court.

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 noncustodial 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 direc-

tor 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 or proof of compliance under section 598.21A is grounds for modification of the support 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 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.

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. A subsequent action to establish paternity against the previously established father is not barred 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.

5A. The court may order a postsecondary education subsidy if good cause is shown.

a. In determining whether good cause exists for ordering a postsecondary education subsidy, the court shall consider the age of the child, the ability of the child relative to postsecondary education, the child's financial resources, whether the child is self-sustaining, and the financial condition of each parent. If the court determines that good cause is shown for ordering a postsecondary education subsidy, the court shall determine the amount of subsidy as follows:

(1) The court shall determine the cost of postsecondary education based upon the cost of attending an in-state public institution for a course of instruction leading to an undergraduate degree and shall include the reasonable costs for only necessary postsecondary education expenses.

(2) The court shall then determine the amount, if any, which the child may reasonably be expected to contribute, considering the child's financial resources, including but not limited to the availability of financial aid whether in the form of scholarships, grants, or student loans, and the ability of the child to earn income while attending school.

(3) The child's expected contribution shall be deducted from the cost of postsecondary education and the court shall apportion responsibility for the remaining cost of postsecondary education to each parent. The amount paid by each parent shall not exceed thirty-three and one-third percent of the total cost of postsecondary education.

b. A postsecondary education subsidy shall be payable to the child, to the educational institution, or to both, but shall not be payable to the custodial parent.

c. A postsecondary education subsidy shall not be awarded if the child has repudiated the parent by publicly disowning the parent, refusing to ac-

knowledge the parent, or by acting in a similar manner.

d. The child shall forward, to each parent, reports of grades awarded at the completion of each academic session, within ten days of receipt of the reports. Unless otherwise specified by the parties, a postsecondary education subsidy awarded by the court shall be terminated upon the child's completion of the first calendar year of course instruction if the child fails to maintain a cumulative grade point average in the median range or above during that first calendar year.

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 598B.

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. Subject to 28 U.S.C. § 1738B, 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.

Unless otherwise provided pursuant to 28 U.S.C. § 1738B, 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, 239B.6, or 252E.11, or if services are being provided pursuant to chapter 252B, the department is a party to the support order. Modifications of orders pertaining to child custody shall

be made pursuant to chapter 598B. 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 three months after the date the notice of the pending petition for modification is served on the opposing party. The three-month limitation applies to a modification action pending on or after July 1, 1997. The prohibition of retroactive modification does not bar the child support recovery unit from obtaining orders for accrued support for previous time periods. Any retroactive modification which increases the amount of child support or any order for accrued support under this paragraph shall include a periodic payment plan. A retroactive modification shall not be regarded as a delinquency unless there are subsequent failures to make payments in accordance with the periodic payment plan.

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.

8A. If a parent awarded joint legal custody and physical care or sole legal custody is relocating the residence of the minor child to a location which is one hundred fifty miles or more from the residence of the minor child at the time that custody was awarded, the court may consider the relocation a substantial change in circumstances. If the court determines that the relocation is a substantial change in circumstances, the court shall modify the custody order to, at a minimum, preserve, as nearly as possible, the existing relationship between the minor child and the nonrelocating parent. If modified, the order may include a provision for extended visitation during summer vacations and school breaks and scheduled telephone contact between the nonrelocating parent and the minor child. The modification may include a provision assigning the responsibility for transportation of the minor child for visitation purposes to either or both parents. If the court makes a finding of past interference by the parent awarded joint legal custody and physical care or sole legal custody with the minor child's access to the other parent, the court may order the posting of a cash bond to

assure future compliance with the visitation provisions of the decree. The supreme court shall prescribe guidelines for the forfeiting of the bond and restoration of the bond following forfeiting of the bond.

9. Subject to 28 U.S.C. § 1738B, but 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, adjustment, or alteration 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 subsection 4, and provision for medical support under chapter 252E. When an application for a cost-of-living alteration of support is submitted by the child support recovery unit pursuant to section 252H.24, the sole issue which may be considered by the court in the action is the application of the cost-of-living alteration in establishing the amount of child support. 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.

2001 Acts, ch 143, §8
Child support recovery unit, initiation of proceedings to modify child support award; §252B.5(7)
Subsection 1, unnumbered paragraph 1 amended

CHAPTER 600

ADOPTION

600.3 Commencement of adoption action — jurisdiction — forum non conveniens.

1. An action for the adoption of any natural person shall be commenced by the filing of an adoption petition, as prescribed in section 600.5, in the juvenile court or court of the county in which an adult person to be adopted is domiciled or resides, or in the juvenile court or court of the county in which the guardian of a minor person to be adopted or the petitioner is domiciled or resides.

2. An adoption petition shall not be filed until a termination of parental rights has been accomplished except in the following cases:

a. No termination of parental rights is required if the person to be adopted is an adult.

b. If the stepparent of the child to be adopted is the adoption petitioner, the parent-child relationship between the child and the parent who is not the spouse of the petitioner may be terminated

as part of the adoption proceeding by the filing of that parent's consent to the adoption.

c. A termination of parental rights order is not required prior to the filing of an adoption petition if the adoption is a standby adoption as defined in section 600.14A.

For the purposes of this subsection, a consent to adopt recognized by the juvenile courts or courts of another jurisdiction in the United States and obtained from a resident of that jurisdiction shall be accepted in this state in lieu of a termination of parental rights proceeding.

Any adoption proceeding pending on or completed prior to July 1, 1978, is hereby legalized and validated to the extent that it is consistent with this subsection.

3. If upon filing of the adoption petition or at any later time in the adoption action the juvenile court or court finds that in the interest of substan-

tial justice the adoption action should be conducted in another juvenile court or court, it may transfer, stay, or dismiss the adoption action on any conditions that are just.

2001 Acts, ch 57, §2
Subsection 2, NEW paragraph c

600.6 Attachments to an adoption petition.

An adoption petition shall have attached to it the following:

1. A certified copy of the birth certificate showing parentage of the person to be adopted or, if such certificate is not available, a verified birth record.

2. A copy of any order terminating parental rights with respect to the person to be adopted.

3. Any written consent and verified statement required under section 600.7, except the consent required under subsection 1, paragraph “d”, of that section.

4. Any preplacement investigation report that has been prepared at the time of filing pursuant to section 600.8.

5. In the case of a standby adoption as defined in section 600.14A, a form completed by the terminally ill parent consenting to termination of parental rights and adoption of the child by a person or persons specified in the consent form, effective at a future date when the terminally ill parent of the child has died or requests that a final adoption decree be issued.

2001 Acts, ch 57, §3
NEW subsection 5

600.8 Placement investigations and reports.

1. *a.* A preplacement investigation shall be directed to and a report of this investigation shall answer the following:

(1) Whether the home of the prospective adoption petitioner is a suitable one for the placement of a minor person to be adopted.

(2) How the prospective adoption petitioner’s emotional maturity, finances, health, relationships, and any other relevant factor may affect the petitioner’s ability to accept, care, and provide a minor person to be adopted with an adequate environment as that person matures.

(3) Whether the prospective adoption petitioner has been convicted of a crime under a law of any state or has a record of founded child abuse.

b. A postplacement investigation and a report of this investigation shall:

(1) Verify the allegations of the adoption petition and its attachments and of the report of expenditures required under section 600.9.

(2) Evaluate the progress of the placement of the minor person to be adopted.

(3) Determine whether adoption by the adoption petitioner may be in the best interests of the minor person to be adopted.

c. A background information investigation and a report of the investigation shall be made by the agency, the person making an independent placement, or an investigator. The background information investigation and report shall not disclose the identity of the biological parents of the minor person to be adopted. The report shall be completed and filed with the court prior to the holding of the adoption hearing prescribed in section 600.12. The report shall be in substantial conformance with the prescribed medical and social history forms designed by the department pursuant to section 600A.4, subsection 2, paragraph “p”. A copy of the background information investigation report shall be furnished to the adoption petitioners within thirty days after the filing of the adoption petition. Any person, including a juvenile court, who has gained relevant background information concerning a minor person subject to an adoption petition shall, upon request, fully cooperate with the conducting of a background information investigation by disclosing any relevant background information, whether contained in sealed records or not.

2. *a.* A preplacement investigation and report of the investigation shall be completed and the prospective adoption petitioner approved for a placement by the person making the investigation prior to any agency or independent placement of a minor person in the petitioner’s home in anticipation of an ensuing adoption. A report of a preplacement investigation that has approved a prospective adoption petitioner for a placement shall not authorize placement of a minor person with that petitioner after one year from the date of the report’s issuance. However, if the prospective adoption petitioner is a relative within the fourth degree of consanguinity who has assumed custody of a minor person to be adopted, a preplacement investigation of this petitioner and a report of the investigation may be completed at a time established by the juvenile court or court or may be waived as provided in subsection 12.

b. (1) The person making the investigation shall not approve a prospective adoption petitioner pursuant to subsection 1, paragraph “a”, subparagraph (3), and an evaluation shall not be performed under subparagraph (2), if the petitioner has been convicted of any of the following felony offenses:

(a) Within the five-year period preceding the petition date, a drug-related offense.

(b) Child endangerment or neglect or abandonment of a dependent person.

(c) Domestic abuse.

(d) A crime against a child, including but not limited to sexual exploitation of a minor.

(e) A forcible felony.

(2) The person making the investigation shall not approve a prospective adoption petitioner pursuant to subsection 1, paragraph “a”, subpara-

graph (3), unless an evaluation has been made which considers the nature and seriousness of the crime or founded abuse in relation to the adoption, the time elapsed since the commission of the crime or founded abuse, the circumstances under which the crime or founded abuse was committed, the degree of rehabilitation, and the number of crimes or founded abuse committed by the person involved.

c. If the person making the investigation does not approve a prospective adoption petitioner under paragraph "a" of this subsection, the person investigated may appeal the disapproval as a contested case to the director of human services. Judicial review of any adverse decision by the director may be sought pursuant to chapter 17A.

3. The department, an agency or an investigator shall conduct all investigations and reports required under subsection 2 of this section.

4. A postplacement investigation and the report of the investigation shall be completed and filed with the juvenile court or court prior to the holding of the adoption hearing prescribed in section 600.12. Upon the filing of an adoption petition pursuant to section 600.5, the juvenile court or court shall immediately appoint the department, an agency, or an investigator to conduct and complete the postplacement report. Any person who has gained relevant background information concerning a minor person subject to an adoption petition shall, upon request, fully cooperate with the conducting of the postplacement investigation by disclosing any relevant information requested, whether contained in sealed records or not.

5. Any person conducting an investigation under subsection 1, paragraph "c", subsection 3, or subsection 4, may, in the investigation or subsequent report, include, utilize, or rely upon any reports, studies, or examinations to the extent they are relevant.

6. Any person conducting an investigation under subsection 1, paragraph "c", subsection 3, or subsection 4, may charge a fee which does not exceed the reasonable cost of the services rendered and which is based on a sliding scale schedule relating to the investigated person's ability to pay.

7. Any investigation or report required under this section shall not apply when the person to be adopted is an adult or when the prospective adoption petitioner or adoption petitioner is a stepparent of the person to be adopted. However, in the case of a stepparent adoption, the juvenile court or court, upon the request of an interested person or on its own motion stating the reasons therefor of record, may order an investigation or report pursuant to this section.

8. Any person designated to make an investigation and report under this section may request an agency or state agency, within or outside this state, to conduct a portion of the investigation or the report, as may be appropriate, and to file a supplemental report of such investigation or report with the juvenile court or court. In the case of the

adoption of a minor person by a person domiciled or residing in any other jurisdiction of the United States, any investigation or report required under this section which has been conducted pursuant to the standards of that other jurisdiction shall be recognized in this state.

9. The department may investigate, on its own initiative or on order of the juvenile court or court, any placement made or adoption petition filed under this chapter or chapter 600A and may report its resulting recommendation to the juvenile court or court.

10. The department or an agency or investigator may conduct any investigations required for an interstate or interagency placement. Any interstate investigations or placements shall follow the procedures and regulations under the interstate compact on the placement of children. Such investigations and placements shall be in compliance with the laws of the states involved.

11. Any person who assists in or impedes the placement or adoption of a minor person in violation of the provisions of this section shall be, upon conviction, guilty of a simple misdemeanor.

12. Any investigation and report required under subsection 1 of this section may be waived by the juvenile court or court if the adoption petitioner is related within the fourth degree of consanguinity to the person to be adopted.

2001 Acts, ch 24, §67, 68, 74

2000 amendments to subsections 4, 7-9, and 12 corrected and reenacted

600.9 Report of expenditures.

1. a. A biological parent shall not receive any thing of value as a result of the biological parent's child or former child being placed with and adopted by another person, unless that thing of value is an allowable expense under subsection 2.

b. Any person assisting in any way with the placement or adoption of a minor person shall not charge a fee which is more than usual, necessary, and commensurate with the services rendered.

c. If the biological parent receives any prohibited thing of value, if a person gives a prohibited thing of value, or if a person charges a prohibited fee under this subsection, the person is guilty of a simple misdemeanor.

2. An adoption petitioner of a minor person shall file with the juvenile court or court, prior to the adoption hearing, a full accounting of all disbursements of any thing of value paid or agreed to be paid by or on behalf of the petitioner in connection with the petitioned adoption. This accounting shall be made by a report prescribed by the juvenile court or court and shall be signed and verified by the petitioner. Only expenses incurred in connection with the following and any other expenses approved by the juvenile court or court are allowable:

a. The birth of the minor person to be adopted.

b. Placement of the minor person with the adoption petitioner and legal expenses related to

the termination of parental rights and adoption processes.

c. Pregnancy-related medical care received by the biological parents or the minor person during the pregnancy or delivery of the minor person and for medically necessary postpartum care for the biological parent and the minor person.

d. Living expenses of the mother, permitted in an amount not to exceed the cost of room and board or rent and food, and transportation, for medical purposes only, on a common carrier of persons or an ambulance, for no longer than thirty days after the birth of the minor person.

e. Costs of the counseling provided to the biological parents prior to the birth of the child, prior to the release of custody, and any counseling provided to the biological parents for not more than sixty days after the birth of the child.

f. Living expenses of the minor person if the minor person is placed in foster care during the pendency of the termination of parental rights proceedings.

All payments for allowable expenses shall be made to the provider, if applicable, and not directly to the biological parents. The provisions of this subsection do not apply in a stepparent adoption.

2001 Acts, ch 24, §67, 74
Section not amended; history added

600.13 Adoption decrees.

1. At the conclusion of the adoption hearing, the juvenile court or court shall:

- a. Issue a final adoption decree;
- b. Issue an interlocutory adoption decree; or,
- c. Issue a standby adoption decree pursuant to section 600.14A.

d. Dismiss the adoption petition if the requirements of this chapter have not been met or if dismissal of the adoption petition is in the best interest of the person whose adoption has been petitioned. Upon dismissal, the juvenile court or court shall determine who is to be guardian or custodian of a minor child, including the adoption petitioner if it is in the best interest of the minor person whose adoption has been petitioned.

2. An interlocutory adoption decree automatically becomes a final adoption decree at a date specified by the juvenile court or court in the interlocutory adoption decree, which date shall not be less than one hundred eighty days nor more than three hundred sixty days from the date the interlocutory decree is issued. However, an interlocutory adoption decree may be vacated prior to the date specified for it to become final. Also, the juvenile court or court may provide in the interlocutory adoption decree for further observation, investigation, and report of the conditions of and the relationships between the adoption petitioner and the person petitioned to be adopted.

3. If an interlocutory adoption decree is vacated under subsection 2, it shall be void from the date of issuance and the rights, duties, and liabilities

of all persons affected by it shall, unless they have become vested, be governed accordingly. Upon vacation of an interlocutory adoption decree, the juvenile court or court shall proceed under the provisions of subsection 1, paragraph “d”.

4. A final adoption decree terminates any parental rights, except those of a spouse of the adoption petitioner, existing at the time of its issuance and establishes the parent-child relationship between the adoption petitioner and the person petitioned to be adopted. Unless otherwise specified by law, such parent-child relationship shall be deemed to have been created at the birth of the child.

5. An interlocutory or a final adoption decree shall be entered with the clerk of court. Such decree shall set forth any facts of the adoption petition which have been proven to the satisfaction of the juvenile court or court and any other facts considered to be relevant by the juvenile court or court and shall grant the adoption petition. If so designated in the adoption decree, the name of the adopted person shall be changed by issuance of that decree. The clerk of the court shall, within thirty days of issuance, deliver one certified copy of any adoption decree to the petitioner, one copy of any adoption decree to the department and any agency or person making an independent placement who placed a minor person for adoption, and one certification of adoption as prescribed in section 144.19 to the state registrar of vital statistics. Upon receipt of the certification, the state registrar shall prepare a new birth certificate pursuant to section 144.23 and deliver to the parents named in the decree and any adult person adopted by the decree a copy of the new birth certificate. The parents shall pay the fee prescribed in section 144.46. If the person adopted was born outside the state, the state registrar shall forward the certification of adoption to the appropriate agency in the state or foreign nation of birth. A copy of any interlocutory adoption decree vacation shall be delivered and another birth certificate shall be prepared in the same manner as a certification of adoption is delivered and the birth certificate was originally prepared.

2001 Acts, ch 24, §69, 74; 2001 Acts, ch 57, §4
2000 amendments to subsections 1 – 3 and 5 corrected and reenacted
Subsection 1, NEW paragraph c and former paragraph c redesignated as d

600.14A Standby adoption.

1. As used in this section:

a. “*Standby adoption*” means an adoption in which a terminally ill parent consents to termination of parental rights and the issuance of a final adoption decree effective upon the occurrence of a future event, which is either the death of the terminally ill parent or the request of the parent for the issuance of a final adoption decree.

b. “*Terminally ill parent*” means an individual who has a medical prognosis by a licensed physician that the individual has an incurable and irre-

versible condition which will lead to death.

2. A terminally ill parent may consent to termination of parental rights and adoption of a child under a standby adoption if the other parent of the child is not living or the other parent has previously had the parent's parental rights terminated.

3. A person who meets the qualifications to file an adoption petition pursuant to section 600.4 may file a petition for standby adoption. A standby adoption shall comply with the requirements of sections 600.7 through 600.12. However, the court may order that the completion of placement investigations and reports be expedited based on the circumstances of a particular case. The court may waive the minimum residence period requirement pursuant to section 600.10 to expedite the standby adoption if necessary.

4. If a consent to a standby adoption is attached to an adoption petition pursuant to section 600.6, the court determines that the requirements of this chapter relative to a standby adoption are met, and the court determines that the standby adoption is in the best interest of the child to be adopted, the court shall issue a standby adoption decree or a final adoption decree. However, the terminally ill parent's parental rights shall not be terminated and the standby adoption shall not be finalized until the death of the terminally ill parent or the request of the terminally ill parent for issuance of the final adoption decree.

5. A standby adoption decree shall become final upon notice of the death of the terminally ill parent or upon the terminally ill parent's request that a final adoption decree be issued. If the court determines at the time of the notice or request that the standby adoption is still in the best interest of the child, the court shall issue a final adoption decree.

2001 Acts, ch 57, §5
NEW section

600.15 Foreign and international adoptions.

1. *a.* A decree establishing a parent-child relationship by adoption which is issued pursuant to due process of law by a juvenile court or court of any other jurisdiction in the United States shall be recognized in this state.

b. A decree terminating a parent-child relationship which is issued pursuant to due process of law by a juvenile court or court of any other jurisdiction in the United States shall be recognized in this state.

c. Documentation demonstrating that a child has been legally released or approved for adoption by the child's country of origin shall be accepted as evidence that termination of parental rights has been completed in that country and shall be recognized in this state.

2. If an adoption has occurred in the minor person's country of origin, a further adoption must occur in the state where the adopting parents re-

side in accordance with the adoption laws of that state.

3. A licensed child-placing agency as defined in section 238.2, a person making an independent placement as defined in section 600A.2, or an investigator may provide necessary assistance to an eligible citizen of Iowa who desires to, in accordance with the immigration laws of the United States, make an international adoption.

2001 Acts, ch 24, §67, 74
Section not amended; history added

600.16A Termination and adoption records closed — exceptions — penalty.

1. The permanent termination of parental rights record of the juvenile court under chapter 600A and the permanent adoption record of the juvenile court or court shall be sealed by the clerk of the juvenile court or the clerk of court, as appropriate, when they are complete and after the time for appeal has expired.

2. All papers and records pertaining to a termination of parental rights under chapter 600A and to an adoption shall not be open to inspection and the identity of the biological parents of an adopted person shall not be revealed except under any of the following circumstances:

a. An agency involved in placement shall contact the adopting parents or the adult adopted child regarding eligibility of the adopted child for benefits based on entitlement of benefits or inheritance from the terminated biological parents.

b. The juvenile court or court, for good cause, shall order the opening of the permanent adoption record of the juvenile court or court for the adopted person who is an adult and reveal the names of either or both of the biological parents following consideration of both of the following:

(1) A biological parent may file an affidavit requesting that the juvenile court or court reveal or not reveal the parent's identity. The juvenile court or court shall consider any such affidavit in determining whether there is good cause to order opening of the records. To facilitate the biological parents in filing an affidavit, the department shall, upon request of a biological parent, provide the biological parent with an adoption information packet containing an affidavit for completion and filing with the juvenile court or court.

(2) If the adopted person who applies for revelation of the biological parents' identity has a sibling who is a minor and who has been adopted by the same parents, the juvenile court or court may deny the application on the grounds that revelation to the applicant may also indirectly and harmfully permit the same revelation to the applicant's minor sibling.

c. A biological sibling of an adopted person may file or may request that the department file an affidavit in the juvenile court or court in which the adopted person's adoption records have been sealed requesting that the juvenile court or court

reveal or not reveal the sibling's name to the adopted person. The juvenile court or court shall consider any such affidavit in determining whether there is good cause to order opening of the records upon application for revelation by the adopted person. However, the name of the biological sibling shall not be revealed until the biological sibling has attained majority.

d. The juvenile court or court may, upon competent medical evidence, open termination or adoption records if opening is shown to be necessary to save the life of or prevent irreparable physical or mental harm to an adopted person or the person's offspring. The juvenile court or court shall make every reasonable effort to prevent the identity of the biological parents from becoming revealed under this paragraph to the adopted person. The juvenile court or court may, however, permit revelation of the identity of the biological parents to medical personnel attending the adopted person or the person's offspring. These medical personnel shall make every reasonable effort to prevent the identity of the biological parents from becoming revealed to the adopted person.

3. In addition to other procedures by which adoption records may be opened under this section, if both of the following conditions are met, the department, the clerk of court, or the agency which made the placement shall open the adoption record for inspection and shall reveal the identity of the biological parents to the adult adopted child or the identity of the adult adopted child to the biological parents:

a. A biological parent has placed in the adoption record written consent to revelation of the biological parent's identity to the adopted child at an age specified by the biological parent, upon request of the adopted child.

b. An adult adopted child has placed in the

adoption record written consent to revelation of the identity of the adult adopted child to a biological parent.

A person who has placed in the adoption record written consent pursuant to paragraph "a" or "b" of this subsection may withdraw the consent at any time by placing a written withdrawal of consent statement in the adoption record.

Notwithstanding the provisions of this subsection, if the adult adopted person has a sibling who is a minor and who has also been adopted by the same parents, the department, the clerk of court, or the agency which made the placement may deny the request of either the adult adopted person or the biological parent to open the adoption records and to reveal the identities of the parties pending determination by the juvenile court or court that there is good cause to open the records pursuant to subsection 2.

4. An adopted person whose adoption became final prior to July 4, 1941, and whose adoption record was not required to be sealed at the time when the adoption record was completed, shall not be required to show good cause for an order opening the adoption record under this subsection, provided that the juvenile court or court shall consider any affidavit filed under this subsection.

5. Notwithstanding subsection 2, a termination of parental rights order issued pursuant to section 600A.9 may be disclosed to the child support recovery unit, upon request, without court order.

6. Any person, other than the adopting parents or the adopted person, who discloses information in violation of this section, is guilty of a simple misdemeanor.

2001 Acts, ch 79, §3
NEW subsection 5 and former subsection 5 renumbered as 6

CHAPTER 602

JUDICIAL BRANCH

602.1216 Retention of clerks of the district court.

A clerk of the district court shall stand for retention in office, in the county of the clerk's office, upon the petition signed by eligible electors residing in the county equal in number to at least ten percent of all registered voters in the county to the state commissioner of elections, at the judicial election in 1988 and every four years thereafter, under sections 46.17 through 46.24. The petition shall be filed in the office of the state commissioner not later than one hundred twenty days before the general election. A clerk who is not retained in office is ineligible to serve as clerk, in the county in which the clerk was not retained, for the four years

following the retention vote.

2001 Acts, ch 56, §37
Section 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 bal-

ance 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, the court technology and modernization fund pursuant to section 602.8108, and the road use tax fund pursuant to section 602.8108, subsection 6, 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 and modernization 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 branch for the Iowa court information system; records management equipment, services, and projects; other technological improvements; electronic legal research equipment, systems, and projects; and the study, development, and implementation of other innovations and projects that would improve the administration of justice. The moneys in the collection fund may also be used for capital improvements necessitated by the installation of or connection with the Iowa court information system, the Iowa communications network, and other technological improvements approved by the judicial branch.

For provisions concerning the deposit of certain delinquent amounts collected in criminal proceedings in the revolving fund established under §602.1302, see §909.10

Distribution of enhanced court collections funds; 2000 Acts, ch 1227, §4; 2001 Acts, ch 172, §2, 20; 2001 Acts, ch 179, §4, 5

Section not amended; internal reference change applied

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. Monthly, 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 during the preceding calendar month or persons who at any time during the preceding calendar month have been legally declared to be mentally incompetent to vote.

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. Destroy all records and files of a court proceeding maintained under section 135L.3 in accordance with section 135L.3, subsection 3, paragraph "o".

32. Reserved.

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 person with mental retardation as provided in sections 222.37 through 222.40.

37. Keep a separate docket of proceedings of cases relating to persons with mental retardation 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 persons with mental impairments 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 of this chapter.
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 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.
- 47B. Perform the duties relating to establishment and operation of a state case registry pursuant to section 252B.24.
- 47C. Perform duties relating to implementation and operation of requirements for the collection services center pursuant to section 252B.13A, subsection 2.
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 driver's 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. Reserved.
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 gener-

ators 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. Reserved.

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 598B.

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 attach-

ment 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 a serious or 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.

126A. Upon the failure of a person charged to

appear in person or by counsel to defend against the offense charged pursuant to a uniform citation and complaint as provided in section 805.6, enter a conviction and render a judgment in the amount of the appearance bond in satisfaction of the penalty plus court costs.

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.

135A. Assess the drug abuse resistance education surcharge as provided by section 911.2.

135B. Assess the law enforcement initiative surcharge as provided by section 911.3.

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. 106, 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. 108, Ia. Ct. Rules, 3d ed.

146. Maintain a motion calendar as provided in R.C.P. 100, Ia. Ct. Rules, 3d ed.

147. Provide notice of a judgment, order, or decree as provided in R.C.P. 115, Ia. Ct. Rules, 3d ed.

148. Issue subpoenas as provided in R.C.P. 155 and 365, 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. Reserved.

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 318, 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.

2001 Acts, ch 168, §1
NEW subsection 135B

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 3.

b. Fines or penalties and criminal penalty surcharges.

c. Crime victim compensation program reimbursement.

d. Court costs, including correctional fees assessed pursuant to sections 356.7 and 904.108, 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, law enforcement initiative surcharge, amounts collected as a result of procedures initiated under subsec-

tion 5 or under section 421.17, subsection 25, or sheriff's room and board fees.

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 branch may assign cases to the centralized collection unit of the department of revenue and finance or its designee to collect 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 branch 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.

2001 Acts, ch 168, §2

Subsection 4, unnumbered paragraph 2 amended

602.8108 Distribution of court revenue.

1. The clerk of the district court shall establish an account and deposit in this account all revenue and other receipts. Not later than the fifteenth day of each month, the clerk shall distribute all revenues received during the preceding calendar month. Each distribution shall be accompanied by a statement disclosing the total amount of revenue received during the accounting period and any adjustments of gross revenue figures that are necessary to reflect changes in the balance of the account, including but not limited to reductions resulting from the dishonor of checks previously accepted by the clerk.

2. Except as otherwise provided, the clerk of the district court shall report and submit to the state court administrator, not later than the fifteenth day of each month, the fines and fees received during the preceding calendar month. Except as provided in subsections 4 and 5, the state court administrator shall deposit the amounts re-

ceived with the treasurer of state for deposit in the general fund of the state. The state court administrator shall report to the legislative fiscal bureau within thirty days of the beginning of each fiscal quarter the amount received during the previous quarter in the account established under this section.

3. When a court assesses a criminal surcharge under section 911.2, the amounts collected shall be distributed as follows:

a. The clerk of the district court shall submit to the state court administrator, not later than the fifteenth day of each month, ninety-five percent of the surcharge collected during the preceding calendar month. The clerk shall remit the remainder to the county treasurer of the county that was the plaintiff in the action or to the city that was the plaintiff in the action.

b. Of the amount received from the clerk, the state court administrator shall allocate eighteen percent to be deposited in the fund established in section 915.94 and eighty-two percent to be deposited in the general fund.

c. Notwithstanding provisions of this subsection to the contrary, all moneys collected from the drug abuse resistance education surcharge provided in section 911.2 shall be remitted to the treasurer of state for deposit in the general fund of the state and the amount deposited is appropriated to the governor's office of drug control policy for use by the drug abuse resistance education program and other programs directed for a similar purpose.

4. When a court assesses the law enforcement initiative surcharge under section 911.3, the clerk of court shall remit to the treasurer of the state, no later than the fifteenth day of each month, all the moneys collected during the preceding month, for deposit in the general fund of the state.

5. A court technology and modernization fund is established as a separate fund in the state treasury. The state court administrator shall allocate one million dollars of the moneys received under subsection 2 to be deposited in the fund, which shall be administered by the supreme court and shall be used as follows:

a. Eighty percent shall be used to enhance the ability of the judicial branch to process cases more quickly and efficiently, to electronically transmit information to state government, local governments, law enforcement agencies, and the public, and to improve public access to the court system. Moneys in this paragraph shall not be used for the Iowa court information system.

b. Twenty percent shall be used in equal amounts to facilitate alternative dispute resolution and methods to resolve domestic abuse cases, which may include personnel for hearings under section 236.4.

6. The state court administrator shall allocate all of the fines and fees attributable to commercial vehicle violation citations issued by motor vehicle division personnel of the state department of

transportation to the treasurer of state for deposit in the road use tax fund.

2001 Acts, ch 168, §3; 2001 Acts, ch 182, §10
 Subsection 3, paragraph c amended
 NEW subsection 4 and former subsections 4 and 5 renumbered as 5 and 6

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 and, beginning July 1, 1997, the first nine million five hundred thousand 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 nonscheduled 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. However, beginning with the fiscal year beginning July 1, 1998, all fines and fees attributable to commercial vehicle violation citations issued after July 1, 1998, shall be deposited as provided in section 602.8108, subsection 6. 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 of the state.

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.

Section not amended; internal reference change applied

602.9111 Investment of fund.

1. So much of the judicial retirement fund as may not be necessary to be kept on hand for the making of disbursements under this article shall be invested by the treasurer of state in any investments authorized for the Iowa public employees' retirement system in section 97B.7, subsection 2, paragraph "b", and the earnings therefrom shall be credited to the fund. The treasurer of state may execute contracts and agreements with investment advisors, consultants, and investment management and benefit consultant firms in the administration of the judicial retirement fund.

2. Investment management expenses shall be charged to the investment income of the fund and there is appropriated from the fund an amount required for the investment management expenses. The court administrator shall report the investment management expenses for the fiscal year as a percent of the market value of the system.

3. For purposes of this section, investment management expenses are limited to the following:

- a. Fees for investment advisors, consultants, and investment management and benefit consultant firms hired by the treasurer of state in administering the fund.
- b. Fees and costs for safekeeping fund assets.
- c. Costs for performance and compliance monitoring, and accounting for fund investments.
- d. Any other costs necessary to prudently invest or protect the assets of the fund.

4. The state court administrator and the treasurer of state, and their employees, are not personally liable for claims based upon an act or omission of the person performed in the discharge of the person's duties concerning the judicial retirement fund, except for acts or omissions which involve malicious or wanton misconduct.

For future amendment to subsection 1 effective July 1, 2002, see 2001 Acts, ch 68, §18, 24
 Section not amended; footnote added

CHAPTER 627

EXEMPTIONS

627.6 General exemptions.

A debtor who is a resident of this state may hold exempt from execution the following property:

1. All wearing apparel of the debtor and the debtor's dependents kept for actual use and the

trunks or other receptacles necessary for the wearing apparel, not to exceed in value one thousand dollars in the aggregate. In addition, the debtor's interest in any wedding or engagement ring owned and received by the debtor or the debt-

or's dependents on or before the date of marriage.

2. One shotgun, and either one rifle or one musket.

3. Private libraries, family bibles, portraits, pictures and paintings not to exceed in value one thousand dollars in the aggregate.

4. An interment space or an interest in a public or private burying ground, not exceeding one acre for any defendant.

5. The debtor's interest in household furnishings, household goods, and appliances held primarily for the personal, family, or household use of the debtor or a dependent of the debtor, not to exceed in value two thousand dollars in the aggregate.

6. The interest of an individual in any accrued dividend or interest, loan or cash surrender value of, or any other interest in a life insurance policy owned by the individual if the beneficiary of the policy is the individual's spouse, child, or dependent. However, the amount of the exemption shall not exceed ten thousand dollars in the aggregate of any interest or value in insurance acquired within two years of the date execution is issued or exemptions are claimed, or for additions within the same time period to a prior existing policy which additions are in excess of the amount necessary to fund the amount of face value coverage of the policies for the two-year period. For purposes of this paragraph, acquisitions shall not include such interest in new policies used to replace prior policies to the extent of any accrued dividend or interest, loan or cash surrender value of, or any other interest in the prior policies at the time of their cancellation.

In the absence of a written agreement or assignment to the contrary, upon the death of the insured any benefit payable to the spouse, child, or dependent of the individual under a life insurance policy shall inure to the separate use of the beneficiary independently of the insured's creditors.

A benefit or indemnity paid under an accident, health, or disability insurance policy is exempt to the insured or in case of the insured's death to the spouse, child, or dependent of the insured, from the insured's debts.

In case of an insured's death the avails of all matured policies of life, accident, health, or disability insurance payable to the surviving spouse, child, or dependent are exempt from liability for all debts of the beneficiary contracted prior to death of the insured, but the amount thus exempted shall not exceed fifteen thousand dollars in the aggregate.

7. Professionally prescribed health aids for the debtor or a dependent of the debtor.

8. The debtor's rights in:

a. A social security benefit, unemployment compensation, or any public assistance benefit.

b. A veteran's benefit.

c. A disability or illness benefit.

d. Alimony, support, or separate maintenance,

to the extent reasonably necessary for the support of the debtor and dependents of the debtor.

e. A payment or a portion of a payment under a pension, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, unless the payment or a portion of the payment results from contributions to the plan or contract by the debtor within one year prior to the filing of a bankruptcy petition, which contributions are above the normal and customary contributions under the plan or contract, in which case the portion of the payment attributable to the contributions above the normal and customary rate is not exempt.

f. Contributions and assets, including the accumulated earnings and market increases in value, in any of the plans or contracts as follows:

(1) All transfers, in any amount, from a trust forming part of a stock, bonus, pension, or profit-sharing plan of an employer defined in section 401(a) of the Internal Revenue Code and of which the trust assets are exempt from taxation under section 501(a) of the Internal Revenue Code and covered by the Employee Retirement Income Security Act of 1974 (ERISA), as codified at 29 U.S.C. 1001 et seq., to either of the following:

(a) A succeeding trust authorized under federal law on or after April 25, 2001.

(b) An individual retirement account or individual retirement annuity established under section 408(d)(3) of the Internal Revenue Code, from which the total value, including accumulated earnings and market increases in value, may be contributed to a succeeding trust authorized under federal law on or after April 25, 2001. For purposes of this subparagraph, transfers, in any amount, from an individual retirement account or individual retirement annuity established under section 408(d)(3) of the Internal Revenue Code to an individual retirement account or individual retirement annuity established under section 408(d)(3) of the Internal Revenue Code, or an individual retirement account established under section 408(a) of the Internal Revenue Code, or an individual retirement annuity established under section 408(b) of the Internal Revenue Code, or a Roth individual retirement account, or a Roth individual retirement annuity established under section 408A of the Internal Revenue Code are exempt.

(2) All transfers, in any amount, from an eligible retirement plan to an individual retirement account, an individual retirement annuity, a Roth individual retirement account, or a Roth individual retirement annuity established under section 408A of the Internal Revenue Code shall be exempt from execution and from the claims of creditors.

As used in this subparagraph, "*eligible retirement plan*" means the funds or assets in any retirement plan established under state or federal law that meet all of the following requirements:

(a) Can be transferred to an individual retirement account or individual retirement annuity established under sections 408(a) and 408(b) of the Internal Revenue Code or Roth individual retirement accounts and Roth individual retirement annuities established under section 408A of the Internal Revenue Code.

(b) Are either exempt from execution under state or federal law or are excluded from a bankruptcy estate under 11 U.S.C. § 541(c)(2) et seq.

(3) Retirement plans established pursuant to qualified domestic relations orders, as defined in 26 U.S.C. § 414. However, nothing in this section shall be construed as making any retirement plan exempt from the claims of the beneficiary of a qualified domestic relations order or from claims for child support or alimony.

(4) For simplified employee pension plans, self-employed pension plans (also known as Keogh plans or H.R. 10 plans), individual retirement accounts established under section 408(a) of the Internal Revenue Code, individual retirement annuities established under section 408(b) of the Internal Revenue Code, savings incentive matched plans for employees, salary reduction simplified employee pension plans (also known as SARSEPs), and similar plans for retirement investments authorized in the future under federal law, the exemption for contributions shall not exceed, for each tax year of contributions, the actual amount of the contribution deducted on the debtor's tax return or the maximum amount which could be contributed to an individual retirement account established under section 408(a) of the Internal Revenue Code and deducted in the tax year of the contribution, whichever is less. The exemption for accumulated earnings and market increases in value of plans under this subparagraph shall be limited to an amount determined by multiplying all the accumulated earnings and market increases in value by a fraction, the numerator of which is the total amount of exempt contributions as determined by this subparagraph, and the denominator of which is the total of exempt and non-exempt contributions to the plan.

(5) For Roth individual retirement accounts and Roth individual retirement annuities established under section 408A of the Internal Revenue Code and similar plans for retirement investments authorized in the future under federal law, the exemption for contributions shall not exceed, for each tax year of contributions, the actual amount of the contribution or the maximum amount which federal law allows to be contributed to such plans. The exemption for accumulated earnings and market increases in value of plans under this subparagraph shall be limited to an amount determined by multiplying all of the accumulated earnings and market increases in value by a fraction, the numerator of which is the total amount of exempt contributions as determined by this subparagraph, and the denominator of which

is the total of exempt and nonexempt contributions to the plan.

(6) For all contributions to plans described in subparagraphs (4) and (5), the maximum contribution in each of the two tax years preceding the claim of exemption or filing of a bankruptcy shall be limited to the maximum deductible contribution to an individual retirement account established under section 408(a) of the Internal Revenue Code, regardless of which plan for retirement investment has been chosen by the debtor.

(7) Exempt assets transferred from any individual retirement account, individual retirement annuity, Roth individual retirement account, or Roth individual retirement annuity to any other individual retirement account, individual retirement annuity, Roth individual retirement annuity, or Roth individual retirement account established under section 408A of the Internal Revenue Code shall continue to be exempt regardless of the number of times transferred between individual retirement accounts, individual retirement annuities, Roth individual retirement annuities, or Roth individual retirement accounts.

For purposes of this paragraph "*f*", "*market increases in value*" shall include, but shall not be limited to, dividends, stock splits, interest, and appreciation. "*Contributions*" means contributions by the debtor and by the debtor's employer.

9. Any combination of the following, not to exceed a value of five thousand dollars in the aggregate:

a. Musical instruments, not including radios, television sets, or record or tape playing machines, held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

b. One motor vehicle.

c. In the event of a bankruptcy proceeding, the debtor's interest in accrued wages and in state and federal tax refunds as of the date of filing of the petition in bankruptcy, not to exceed one thousand dollars in the aggregate. This exemption is in addition to the limitations contained in sections 642.21 and 537.5105.

10. If the debtor is engaged in any profession or occupation other than farming, the proper implements, professional books, or tools of the trade of the debtor or a dependent of the debtor, not to exceed in value ten thousand dollars in the aggregate.

11. If the debtor is engaged in farming and does not exercise the delay of the enforceability of a deficiency judgment or general execution under section 654.6 in relation to the execution under which the exemption is claimed, any combination of the following, not to exceed a value of ten thousand dollars in the aggregate:

a. Implements and equipment reasonably related to a normal farming operation. This exemption is in addition to a motor vehicle held exempt under subsection 9.

b. Livestock and feed for the livestock reason-

ably related to a normal farming operation.

12. If the debtor is engaged in farming the agricultural land upon the commencement of an action for the foreclosure of a mortgage on the agricultural land or for the enforcement of an obligation secured by a mortgage on the agricultural land, if a deficiency judgment is issued against the debtor, and if the debtor does not exercise the delay of the enforceability of the deficiency judgment or general execution under section 654.6 in relation to the execution under which the exemption is claimed, the disposable earnings of the debtor are exempt from garnishment to enforce the deficiency judgment after two years from the entry of the deficiency judgment, sections 642.21 and 642.22 notwithstanding. However, earnings paid to the debtor directly or indirectly by the debtor are not exempt.

13. The debtor's interest, not to exceed one hundred dollars in the aggregate, in any cash on hand, bank deposits, credit union share drafts, or other deposits, wherever situated, or other personal property not otherwise specifically provided for in this chapter.

14. The debtor's interest, not to exceed five hundred dollars in the aggregate, in any combination of the following property:

a. Any residential rental deposit held by a landlord as a security deposit, as well as any interest earned on such deposit as a result of any statute or rule requiring that such deposit be placed in an interest-bearing account.

b. Any residential utility deposit held by any electric, gas, telephone, or water company as a condition for initiation or reinstatement of such

utility service, as well as any interest earned on such deposit as a result of any statute or rule requiring that such deposit be placed in an interest-bearing account.

c. Any rent paid to the landlord in advance of the date due under any unexpired residential lease.

Notwithstanding the provisions of this subsection, a debtor shall not be permitted to claim these exemptions against a landlord or utility company, with regard to sums held under the terms of a rental agreement, or for utility services furnished to the debtor.

2001 Acts, ch 80, §1 - 4; 2001 Acts, ch 176, §77

Exemptions denied, §123.113

Judgment for exempt property, §643.22

Subsection 8, paragraph f, subparagraph (1) stricken and rewritten

Subsection 8, paragraph f, NEW subparagraph (2) and former subparagraphs (2) and (3) renumbered as (3) and (4)

Subsection 8, paragraph f, subparagraph (4) amended

Subsection 8, paragraph f, NEW subparagraphs (5) - (7)

627.13 Workers' compensation.

Notwithstanding the provisions of sections 554.9406 and 554.9408, any compensation due or that may become due an employee or dependent under chapter 85, 85A, or 85B is exempt from garnishment, attachment, execution, and assignment of income, except for the purposes of enforcing child, spousal, or medical support obligations. For the purposes of enforcing child, spousal, or medical support obligations, an assignment of income, garnishment or attachment of or the execution against compensation due an employee under chapter 85, 85A, or 85B is not exempt but shall be limited as specified in 15 U.S.C. § 1673(b).

2001 Acts, ch 87, §8

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 garnished 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 manufactured or mobile home or person-

al 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.

6. The district court sitting in small claims has concurrent jurisdiction of an action to challenge a mechanic's lien pursuant to sections 572.24 and 572.32.

2001 Acts, ch 153, §15; 2001 Acts, ch 176, §80
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

Terminology change applied

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 49(e), 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 no-

tice 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 two 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 three days prior to the date set for hearing. The attempts to perfect personal service may be made on the same day. In addition to posting, the plaintiff shall also mail, by certified mail, to each defendant, at the place held out by each defendant as the place for receipt 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 three 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, whether or not the defendant signs a receipt for the notice.

d. If personal service cannot be made upon each defendant in an action for forcible entry or detention of real property joined with an action for rent or recovery pursuant to section 648.19, service may be made pursuant to paragraph "c".

3. *Actions for abandonment of manufactured or mobile homes or personal property pursuant to chapter 555B.*

a. In an action for abandonment of a manufactured or 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 upon each defendant as provided in section 555B.4.

2001 Acts, ch 153, §15; 2001 Acts, ch 176, §80
Terminology change applied

CHAPTER 633

PROBATE CODE

633.231 Notice in intestate estates — medical assistance claims.

Upon opening administration of an intestate estate, the administrator may, in accordance with section 633.410, provide by ordinary mail to the entity designated by the department of human services, a notice of opening administration of the estate and of the appointment of the administrator, which shall include a notice to file claims with the clerk within the later to occur of fifteen months from the second publication of the notice or two months from the date of mailing of this notice, or thereafter be forever barred.

The notice shall be in substantially the following form:

NOTICE OF OPENING ADMINISTRATION OF ESTATE, OF APPOINTMENT OF ADMINISTRATOR, AND NOTICE TO CREDITOR

In the District Court of Iowa
In and for County.
In the Estate of, Deceased
Probate No.

To the Department of Human Services Who May Be Interested in the Estate of, Deceased, who died on or about (date):

You are hereby notified that on the day of (month), (year), an intestate estate was opened in the above-named court and that was appointed administrator of the estate.

You are further notified that the birthdate of the deceased is and the deceased's social security number is The birthdate of the spouse is and the spouse's social security number is, and that the spouse of the deceased is alive as of the date of this notice, or deceased as of (date).

You are further notified that the deceased was/was not a disabled or a blind child of the medical assistance recipient by the name of, who had a birthdate of and a social security number of, and the medical assistance debt of that medical assistance recipient was waived pursuant to section 249A.5, subsection 2, paragraph "a", subparagraph (1), and is now collectible from this estate pursuant to section 249A.5, subsection 2, paragraph "b".

Notice is hereby given that if the department of human services has a claim against the estate for the deceased person or persons named in this no-

tice, the claim shall be filed with the clerk of the above-named district court, as provided by law, duly authenticated, for allowance, and unless so filed by the later to occur of fifteen months from the second publication of this notice or two months from the date of the mailing of this notice, unless otherwise allowed or paid, the claim is thereafter forever barred.

Dated this day of (month), (year)

Administrator of estate
Address

Attorney for administrator
Address
Date of second publication
. day of (month), (year)
(Date to be inserted by publisher)

2001 Acts, ch 109, §1
NEW section

633.232 through 633.235 Reserved.

633.304A Notice of probate of will — medical assistance claims.

On admission of a will to probate, the executor may, in accordance with section 633.410, provide by ordinary mail to the entity designated by the department of human services, a notice of admission of the will to probate and of the appointment of the executor, which shall include a notice to file claims with the clerk within the later to occur of fifteen months from the second publication of the notice or two months from the date of mailing of this notice, or thereafter be forever barred.

The notice shall be in substantially the following form:

NOTICE OF PROBATE OF WILL, OF APPOINTMENT OF EXECUTOR, AND NOTICE TO CREDITORS

In the District Court of Iowa
In and for County.
In the Estate of, Deceased
Probate No.

To the Department of Human Services, Who May Be Interested in the Estate of, Deceased, who died on or about (date):

You are hereby notified that on the day of (month), (year), the last will and testament of, deceased, bear-

ing date of the day of (month), (year), was admitted to probate in the above-named court and that was appointed executor of the estate.

You are further notified that the birthdate of the deceased is and the deceased's social security number is-- The birthdate of the spouse is and the spouse's social security number is--, and that the spouse of the deceased is alive as of the date of this notice, or deceased as of (date).

You are further notified that the deceased was/ was not a disabled or a blind child of the medical assistance recipient by the name of, who had a birthdate of and a social security number of--, and the medical assistance debt of that medical assistance recipient was waived pursuant to section 249A.5, subsection 2, paragraph "a", subparagraph (1), and is now collectible from this estate pursuant to section 249A.5, subsection 2, paragraph "b".

Notice is hereby given that if the department of human services has a claim against the estate for the deceased person or persons named in this notice, the claim shall be filed with the clerk of the above-named district court, as provided by law, duly authenticated, for allowance, and unless so filed by the later to occur of fifteen months from the second publication of this notice or two months from the date of mailing of this notice, unless otherwise allowed or paid, the claim is thereafter forever barred.

Dated this day of (month), (year)

.
Executor of estate
.
Address

.
Attorney for executor
.
Address

Date of second publication
. day of (month), (year)
(Date to be inserted by publisher)

2001 Acts, ch 109, §2
NEW section

633.356 Distribution of property by affidavit.

1. When the gross value of the decedent's personal property does not exceed twenty-five thousand dollars and there is no real property or the real property passes to persons exempt from inheritance tax pursuant to section 450.9 as joint tenants with right of survivorship, and if forty days have elapsed since the death of the decedent, the successor of the decedent as defined in subsection 2 may, by filing an affidavit prepared pur-

suant to subsection 3, and without procuring letters of appointment, do any of the following with respect to one or more particular items of personal property:

a. Receive any particular item of property that is tangible personal property of the decedent.

b. Have any particular item of property that is evidence of a debt, obligation, interest, right, security, or chose in action belonging to the decedent transferred.

c. Collect the proceeds from any life insurance policy or any other item of property for which a beneficiary has not been designated.

2. "Successor of the decedent" means:

a. If the decedent died testate, the beneficiary or beneficiaries who succeeded to the particular item of property of the decedent under the decedent's will. For the purposes of this subsection the trustee of a trust created during the decedent's lifetime is a beneficiary under the decedent's will if the trust succeeds to the particular item of property under the decedent's will.

b. If the decedent died intestate, the person or persons who succeeded to the particular item of property of the decedent under the laws of intestate succession of this state.

3. To collect money, receive tangible personal property, or have evidences of intangible personal property transferred under this chapter, the successor of the decedent shall furnish to the holder of the decedent's property an affidavit under penalty of perjury stating all of the following:

a. The decedent's name and the date and place of the decedent's death.

b. That at least forty days have elapsed since the death of the decedent, as shown by an attached certified copy of the death certificate of the decedent.

c. That the gross value of the decedent's personal property does not exceed twenty-five thousand dollars and there is no real property or the real property passes to persons exempt from inheritance tax pursuant to section 450.9 as joint tenants with right of survivorship.

d. A description of the property of the decedent that is to be paid, transferred, or delivered to the successor.

e. The name, address, and social security number of the successor of the decedent to the described property, and whether the successor is under a legal disability.

f. If applicable, that attached copy of the decedent's will is the last will of the decedent and has been admitted to probate or otherwise filed in the office of a clerk of the district court.

g. That no persons other than those listed in the affidavit have a right to the interest of the decedent in the described property.

h. That the affiant requests that the described property be paid, delivered, or transferred to the successors of the decedent to the described property.

i. That the affiant affirms under penalty of perjury that the affidavit is true and correct.

More than one person may execute an affidavit under this subsection.

4. If the decedent had evidence of ownership of the property described in the affidavit and the holder of the property would have the right to require presentation of the evidence of ownership before the duty of the holder to pay, deliver, or transfer the property to the decedent would have arisen, the evidence of the ownership, if available, shall be presented with the affidavit to the holder of the decedent's property.

If the evidence of ownership is not presented to the holder of the property, the holder may require, as a condition for the payment, delivery, or transfer of the property, that the successor provide the holder with a bond in a reasonable amount determined by the holder to be sufficient to indemnify the holder against all liability, claims, demands, loss, damages, costs, and expenses that the holder may incur or suffer by reason of the payment, delivery, or transfer of the property. This subsection does not preclude the holder and the successor from dispensing with the requirement that a bond be provided, and instead entering into an agreement satisfactory to the holder concerning the duty of the successor to indemnify the holder.

Judgments rendered by any court in this state and mortgages belonging to a decedent whose personal property is being distributed pursuant to this section may, without prior order of court, be released, discharged, or assigned, in whole or in part, as to any particular property, and deeds may be executed in performance of real estate contracts entered into by the decedent, where an affidavit made pursuant to subsection 3 is filed in the office of the county recorder of the county wherein any judgment, mortgage, or real estate contract appears of record.

5. Reasonable proof of the identity of each successor of the decedent seeking distribution by virtue of the affidavit shall be provided to the satisfaction of the holder of the decedent's property.

6. If the requirements of this section are satisfied:

a. The property described in the affidavit shall be paid, delivered, or transferred to the successor of the decedent's interest in the property.

b. A transfer agent of a security described in the affidavit shall change registered ownership on the books of the corporation from the decedent to the person listed on the affidavit as the successor of the decedent's interest.

If the holder of the decedent's property refuses to pay, deliver, or transfer any property or evidence thereof to the successor of the decedent within a reasonable time, the successor may recover the property or compel its payment, delivery, or transfer in an action brought for that purpose against the holder of the property. If an action is brought against the holder under this subsection,

the court shall award attorney's fees to the person bringing the action if the court finds that the holder of the decedent's property acted unreasonably in refusing to pay, deliver, or transfer the property to the person as required by this subsection.

7. If the requirements of this section are satisfied, receipt by the holder of the decedent's property of the affidavit constitutes sufficient acquittance for the payment of money, delivery of property, or transferring the registered ownership of property pursuant to this chapter and discharges the holder from any further liability with respect to the money or property. The holder may rely in good faith on the statements in the affidavit and has no duty to inquire into the truth of any statement in the affidavit.

If the requirements of this section are satisfied, the holder is not liable for any debt owed by the decedent by reason of paying money, delivering property, or transferring registered ownership of property pursuant to this chapter.

8. When a deceased distributee is entitled to money or property claimed in an affidavit presented under this section with respect to a deceased person whose estate is being administered in this state, the personal representative of the person whose estate is being administered shall present the affidavit to the court in which the estate is being administered. The court shall direct the personal representative to pay the money or deliver the property to the person identified by the affidavit as the successor of the deceased distributee to the extent that the court determines that the deceased distributee was entitled to the money or property under the will or the laws of intestate succession.

9. The procedure provided by this section may be used only if no administration of the decedent's estate is pending.

2001 Acts, ch 140, §3 - 5
2001 amendments to subsection 1 and subsection 3, paragraph c, apply to estates of decedents dying on or after July 1, 2001; 2001 Acts, ch 140, §5
Subsection 1, unnumbered paragraph 1 amended
Subsection 3, paragraph c amended

633.410 Limitation on filing claims against decedent's estate.

1. 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.

2. Notwithstanding subsection 1, claims for debts created under section 249A.5, subsection 2, relating to the recovery of medical assistance payments shall be barred under this section unless

filed with the clerk within the later to occur of fifteen months after the date of the second publication of the notice to creditors, or two months after service of notice by ordinary mail, on the form prescribed in section 633.231 for intestate estates or on the form prescribed in section 633.304A for testate estates, to the entity designated by the department of human services to receive notice.

3. Notice is not required to be given by mail to any creditor whose claim will be paid or otherwise satisfied during administration and the personal representative may waive the limitation on filing provided under this section. This section does not bar claims for which there is insurance coverage, to the extent of the coverage, or claimants entitled to equitable relief due to peculiar circumstances.

2001 Acts, ch 109, §3
Section amended

633.480 Certificate to county recorder for tax purposes with administration.

After discharge as provided in section 633.479, the clerk shall certify under chapter 558 relative to each parcel of real estate described in the final report of the personal representative which has not been sold by the personal representative, and deliver the certificate to the county recorder of the county in which the real estate is situated. The certificate shall include the name and complete mailing address, as shown on the final report, of the individual or entity in whose name each parcel of real estate is to be taxed. The county recorder shall deliver the certificate to the county auditor as provided in section 558.58.

2001 Acts, ch 45, §10
Section amended

633.4213 Duty to inform and account.

1. A trustee shall keep the beneficiaries of the trust reasonably informed of the administration of the trust.

2. Within thirty days after accepting the office

of the trustee, the trustee shall inform the beneficiaries of the acceptance. Within thirty days after the death of a settlor of a trust, the trustee shall inform the beneficiaries having vested interests of their respective interests in the trust unless the trust specifies otherwise.

3. A trustee shall inform the beneficiaries in advance of a transaction affecting trust property comprising a significant portion of the value of the trust and whose fair market value is not readily ascertainable.

4. On reasonable request of a beneficiary, a trustee shall provide the beneficiary with a copy of the trust instrument and with information about matters of administration relevant to the beneficiary's interest unless the trust specifies otherwise.

5. A trustee shall prepare and send to the beneficiaries an account of the trust property, liabilities, receipts, and disbursements at least annually, at the termination of the trust, and upon a change of a trustee. An accounting on behalf of a former trustee shall be prepared by the former trustee, or if the trustee's appointment is terminated by reason of death or incapacity, by the former trustee's personal representative or guardian or conservator.

6. Copies of accountings and other information required under this section need only be sent to the following beneficiaries:

a. The beneficiaries defined in section 633.4105.*

b. Each beneficiary who has delivered to the trustee or other fiduciary a written request for a copy of the account or other information.

7. An accounting and other information required under this section may be waived if the person entitled to a copy consents in writing.

2001 Acts, ch 176, §78
*Definition of beneficiary contained in 99 Acts, ch 125, §40, stricken by 2000 Acts, ch 1150, §22
Subsection 5 amended

CHAPTER 639

ATTACHMENT

639.53 Description of real estate.

Where real property is attached, the sheriff shall describe it with certainty to identify it, and, where the sheriff can do so, by a reference to the

document reference number where the deed under which the defendant holds is recorded.

2001 Acts, ch 44, §29
Section amended

CHAPTER 642

GARNISHMENT

642.22 Validity of garnishment notice — duty to monitor account.

1. A notice of garnishment served upon a gar-

nishee is effective without serving another notice until the earliest of the following:

a. The annual maximum permitted to be gar-

nished under section 642.21 has been withheld.

b. The writ of execution expires.

c. The judgment is satisfied.

d. The garnishment is released by the sheriff at the request of the plaintiff or the plaintiff's attorney.

2. A supervised financial organization, as defined in section 537.1301, subsection 42, which is garnished for an account of a defendant, after paying the sheriff any amounts then in the account,

shall monitor the account for any additional amounts at least monthly while the garnishment notice is effective.

3. Expiration of the execution does not affect a garnishee's duties and liabilities respecting property already withheld pursuant to the garnishment.

2001 Acts, ch 92, §2

Subsection 1, paragraph d stricken and rewritten

CHAPTER 648

FORCIBLE ENTRY OR DETENTION OF REAL PROPERTY

648.3 Notice to quit.

Before action can be brought in any except the first of the above classes, three days' notice to quit must be given to the defendant in writing. However, a landlord who has given a tenant three days' notice to pay rent and has terminated the tenancy as provided in section 562A.27, subsection 2, or section 562B.25, subsection 2, if the tenant is renting the manufactured or mobile home or the land from the landlord may commence the action without giving a three-day notice to quit.

2001 Acts, ch 153, §15; 2001 Acts, ch 176, §80
Terminology change applied

648.22A Executions involving mobile homes and manufactured homes.

1. In cases covered by chapter 562B, upon expiration of three days from the date the judgment is entered pursuant to section 648.22, the defendant may elect to leave a mobile home or manufactured home and its contents in the manufactured home community or mobile home park for up to thirty days provided all of the following occur:

a. The plaintiff consents and the plaintiff has complied with the provisions of section 648.6.

b. All utilities to the mobile home or manufactured home are disconnected prior to expiration of three days from the entry of judgment. Payment of any reasonable costs incurred in disconnecting utilities is the responsibility of the defendant.

2. During the thirty-day period the defendant may have reasonable access to the home site to show the home to prospective purchasers, prepare the home for removal, or remove the home, provided that the defendant gives the plaintiff and sheriff at least twenty-four hours' notice prior to each exercise of the defendant's right of access.

3. During the thirty-day period the defendant shall not occupy the home or be present on the premises between the hours of seven p.m. and seven a.m. A violation of this subsection shall be punishable as contempt.

4. If the defendant finds a purchaser of the home, who is a prospective tenant of the manufactured home community or mobile home park, the provisions of section 562B.19, subsection 3, paragraph "c", shall apply.

5. If, within the thirty-day period, the home is not sold to an approved purchaser or removed from the manufactured home community or mobile home park, all of the following shall occur:

a. The home, its contents, and any other property of the defendant remaining on the premises shall become the property of the plaintiff free and clear of all rights of the defendant to the property and of all liens, claims, or encumbrances of third parties, and any tax levied pursuant to chapter 435 may be abated by the board of supervisors.

b. Any money judgment against the defendant and in favor of the plaintiff relating to the previous tenancy shall be deemed satisfied.

c. The county treasurer, upon receipt of a fee equal to the fee specified in section 321.42 for replacement of certificates of title for motor vehicles, and upon receipt of an affidavit submitted by the plaintiff verifying that the home was not sold to an approved purchaser or removed within the time specified in this subsection, shall issue to the plaintiff a new title for the home.

6. A purchaser of the home shall be liable for any unpaid sums due the plaintiff, sheriff, or county treasurer. For the purposes of this section, "purchaser" includes a lienholder or other claimant acquiring title to the home in whole or in part by reason of a lien or other claim.

7. A mobile home or manufactured home shall not be removed without the prior payment to the plaintiff of all sums owing at the time of entry of judgment, interest accrued on such sums as provided by law, and per diem rent for that portion of the thirty-day period which has expired prior to removal, and payment of any taxes due on the home which are not abated pursuant to subsection 5.

2001 Acts, ch 153, §16

Terminology change applied

648.22B Cases where mobile or manufactured home is the subject of a foreclosure action.

1. When a mobile or manufactured home located in a manufactured home community or mobile home park is the subject of an action by a lienholder to foreclose a lienhold interest, the plaintiff may advance all moneys due and owing to the landlord and enter into an agreement with the court to pay to the landlord before delinquency all rent, reasonable upkeep, and other reasonable charges thereafter accruing on the home and space that it occupies, in which case any writ of execution on a judgment under this chapter will be stayed until the home is sold in place as provided by law or removed from the manufactured home community or mobile home park at the plaintiff's expense.

2. When the conditions of subsection 1 have been satisfied, the clerk of court shall so notify the

sheriff of the county in which the mobile or manufactured home is located.

3. The landlord shall have standing to intervene in the foreclosure proceedings or to file a separate action to compel compliance with the lienholder's undertaking pursuant to subsection 1 and shall be entitled to recover costs and attorney fees incurred.

4. All expenditures made by a lienholder pursuant to subsection 1 shall be recoverable from the lien debtor in the foreclosure proceedings as protective disbursements whether or not provision is made for such recovery in the documentation of the subject lien.

5. In any case where this section has become operative, the provisions of section 648.18 shall not apply.

2001 Acts, ch 153, §16
Terminology change applied

CHAPTER 655A

**NONJUDICIAL FORECLOSURE OF
NONAGRICULTURAL MORTGAGES**

655A.3 Notice.

1. The nonjudicial foreclosure is initiated by the mortgagee by serving on the mortgagor a written notice which shall:

a. Reasonably identify by a document reference number the mortgage and accurately describe the real estate covered.

b. Specify the terms of the mortgage with which the mortgagor has not complied. The terms shall not include any obligation arising from acceleration of the indebtedness secured by the mortgage.

c. State that, unless within thirty days after the completed service of the notice the mortgagor performs the terms in default or files with the recorder of the county where the mortgaged property is located a rejection of the notice pursuant to section 655A.6 and serves a copy of the rejection upon the mortgagee, the mortgage will be foreclosed.

The notice shall contain the following in capital letters of the same type or print size as the rest of the notice:

WITHIN THIRTY DAYS AFTER YOUR RECEIPT OF THIS NOTICE, YOU MUST EITHER CURE THE DEFAULTS DESCRIBED IN THIS NOTICE OR FILE WITH THE RECORDER OF THE COUNTY WHERE THE MORTGAGED PROPERTY IS LOCATED A REJECTION OF THIS NOTICE AND SERVE A COPY OF YOUR REJECTION ON THE MORTGAGEE IN THE MANNER PROVIDED BY THE RULES OF CIVIL PROCEDURE FOR SERVICE OF ORIGINAL NOTICES. IF YOU WISH TO REJECT THIS NO-

TICE, YOU SHOULD CONSULT AN ATTORNEY AS TO THE PROPER MANNER TO MAKE THE REJECTION.

IF YOU DO NOT TAKE EITHER OF THE ACTIONS DESCRIBED ABOVE WITHIN THE THIRTY-DAY PERIOD, THE FORECLOSURE WILL BE COMPLETE AND YOU WILL LOSE TITLE TO THE MORTGAGED PROPERTY. AFTER THE FORECLOSURE IS COMPLETE THE DEBT SECURED BY THE MORTGAGED PROPERTY WILL BE EXTINGUISHED.

2. The mortgagee shall also serve a copy of the notice required in subsection 1 on the person in possession of the real estate, if different than the mortgagor, and on all junior lienholders of record.

3. As used in this chapter, "mortgagee" and "mortgagor" include a successor in interest.

2001 Acts, ch 44, §30
Subsection 1, paragraph a amended

655A.6 Rejection of notice.

If either the mortgagor, or successor in interest of record including a contract purchaser, within thirty days of service of the notice pursuant to section 655A.3, files with the recorder of the county where the mortgaged property is located, a rejection of the notice reasonably identifying by a document reference number the notice which is rejected together with proofs of service required under section 655A.4 that the rejection has been served on the mortgagee, the notice served upon the mortgagor pursuant to section 655A.3 is of no force or effect.

2001 Acts, ch 44, §31
Section amended

CHAPTER 656

FORFEITURE OF REAL ESTATE CONTRACTS

656.2 Notice.

1. The forfeiture shall be initiated by the vendor by serving on the vendee a written notice which shall:

a. Reasonably identify the contract by a document reference number and accurately describe the real estate covered.

b. Specify the terms of the contract with which the vendee has not complied.

c. State that unless, within thirty days after the completed service of the notice, the vendee performs the terms in default and pays the reasonable costs of serving the notice, the contract will be forfeited.

d. Specify the amount of attorney fees claimed by the vendor pursuant to section 656.7 and state that payment of the attorney fees is not required to comply with the notice and prevent forfeiture.

2. The vendor shall also serve a copy of the notice required in subsection 1 on the person in possession of the real estate, if different than the vendee; on all the vendee's mortgagees of record; and on a person who asserts a claim against the vendee's interest, except a government or governmental subdivision or agency holding a lien for real estate taxes or assessments, if the person has done both of the following:

a. Requested, on a form which substantially complies with the following form, that notice of forfeiture be served on the person at an address specified in the request.

REQUEST FOR NOTICE PURSUANT TO IOWA CODE SECTION 656.2, SUBSECTION 2

The undersigned requests service of notice under Iowa Code sections 656.2 and 656.3 to forfeit the contract recorded on the day of (month), (year), in book or roll, image or page, office of the county recorder, county, Iowa, wherein

..... is/are seller(s) and is/are buyer(s), for sale of real estate legally described as: [insert complete legal description]

NAME

ADDRESS

CAUTION: Your name and address must be correct. If not correct, you will not receive notice requested because notice need only be served on you at the above address. If your address changes, a new request for notice must be filed.

The request for notice shall be indexed pursuant to section 558.50.*

b. Filed the request form for record in the office of the county recorder after acquisition of the vendee's interest but prior to the date of recording of the proof and record of service of notice of forfeiture required by section 656.5 and paid a fee of five dollars.

The request for notice is valid for a period of five years from the date of filing with the county recorder. The request for notice may be renewed for additional periods of five years by the procedure specified in this subsection. The request for notice may be amended at any time by the procedure specified in this subsection.

The vendee's mortgagees of record include all assignees of record for collateral purposes.

3. As used in this section, the terms "vendor" and "vendee" include a successor in interest but the term "vendee" excludes a vendee who assigned or conveyed of record all of the vendee's interest in the real estate.

2001 Acts, ch 44, §32
*Section 558.50 repealed by 2001 Acts, ch 44, §33; corrective legislation is pending
Subsection 1, paragraph a amended

CHAPTER 668

LIABILITY IN TORT — COMPARATIVE FAULT

668.13 Interest on judgments.

Interest shall be allowed on all money due on judgments and decrees on actions brought pursuant to this chapter, subject to the following:

1. Interest, except interest awarded for future damages, shall accrue from the date of the com-

mencement of the action.

2. If the interest rate is fixed by a contract on which the judgment or decree is rendered, the interest allowed shall be at the rate expressed in the contract, not exceeding the maximum rate permitted under section 535.2.

3. Interest shall be calculated as of the date of judgment at a rate equal to the treasury constant maturity index published by the federal reserve in the H15 report settled immediately prior to the date of the judgment plus two percent. The state court administrator shall distribute notice monthly of that rate and any changes to that rate to all district courts.

4. Interest awarded for future damages shall not begin to accrue until the date of the entry of the judgment.

5. Interest shall be computed daily to the date of the payment, except as may otherwise be ordered by the court pursuant to a structured judgment under section 668.3, subsection 7.

6. Structured, periodic, or other nonlump-sum payments ordered pursuant to section 668.3, subsection 7, shall reflect interest in accordance with annuity principles.

2001 Acts, ch 87, §9, 10
2001 amendment to subsection 3 takes effect April 26, 2001, and applies retroactively to February 28, 2001; 2001 Acts, ch 87, §10
Subsection 3 amended

CHAPTER 669

STATE TORT CLAIMS

669.2 Definitions.

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

1. *“Acting within the scope of the employee’s office or employment”* means acting in the employee’s line of duty as an employee of the state.

2. *“Award”* means any amount determined by the state appeal board to be payable to a claimant under section 669.3, and the amount of any compromise or settlement under section 669.9.

3. *“Claim”* means:

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

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

4. *“Employee of the state”* includes any one or more officers, agents, or employees of the state or any state agency, including members of the general assembly, and persons acting on behalf of the state or any state agency in any official capacity, temporarily or permanently in the service of the state of Iowa, whether with or without compensation, but does not include a contractor doing business with the state. Professional personnel, including physicians, osteopathic physicians and surgeons, osteopathic physicians, optometrists, dentists, nurses, physician assistants, and other medical personnel, who render services to patients or inmates of state institutions under the jurisdiction of the department of human services or the Iowa department of corrections, and employees of the commission of veterans affairs, are

to be considered employees of the state, whether the personnel are employed on a full-time basis or render services on a part-time basis on a fee schedule or other arrangement. Criminal defendants while performing unpaid community service ordered by the district court, board of parole, or judicial district department of correctional services, or an inmate providing services pursuant to a chapter 28E agreement entered into pursuant to section 904.703, and persons supervising those inmates under and according to the terms of the chapter 28E agreement, are to be considered employees of the state.

“Employee of the state” also includes an individual performing unpaid community service under an order of the district court pursuant to section 598.23A.

5. *“State agency”* includes all executive departments, agencies, boards, bureaus, and commissions of the state of Iowa, and corporations whose primary function is to act as, and while acting as, instrumentalities or agencies of the state of Iowa, whether or not authorized to sue and be sued in their own names. This definition does not include a contractor with the state of Iowa. Soil and water conservation districts as defined in section 161A.3, subsection 6, judicial district departments of correctional services as established in section 905.2, and library service area boards of trustees as established in chapter 256 are state agencies for purposes of this chapter.

6. *“State appeal board”* means the state appeal board as defined in section 73A.1.

2001 Acts, ch 158, §37
Subsection 5 amended

669.14 Exceptions.

The provisions of this chapter shall not apply with respect to any claim against the state, to:

1. Any claim based upon an act or omission of an employee of the state, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid, or based upon the exercise or performance or the failure to

exercise or perform a discretionary function or duty on the part of a state agency or an employee of the state, whether or not the discretion be abused.

2. Any claim arising in respect to the assessment or collection of any tax or fee, or the detention of any goods or merchandise by any law enforcement officer.

3. Any claim for damages caused by the imposition or establishment of a quarantine by the state, whether such quarantine relates to persons or property.

4. Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights.

5. Any claim by an employee of the state which is covered by the Iowa workers' compensation law or the Iowa occupational disease law.

6. Any claim by an inmate as defined in section 85.59.

7. A claim based upon damage to or loss or destruction of private property, both real and personal, or personal injury or death, when the damage, loss, destruction, injury or death occurred as an incident to the training, operation, or maintenance of the national guard while not in "state active duty" as defined in section 29A.1.

8. Any claim based upon or arising out of a claim of negligent design or specification, negligent adoption of design or specification, or negligent construction or reconstruction of a highway, secondary road, or street as defined in section 321.1, subsection 78, that was constructed or reconstructed in accordance with a generally recognized engineering or safety standard, criteria, or design theory in existence at the time of the construction or reconstruction. A claim under this chapter shall not be allowed for failure to upgrade, improve, or alter any aspect of an existing highway, secondary road, or street, to new, changed, or altered design standards. In respect to highways and roads, sealcoating, asphaltting, patching, resurfacing, ditching, draining, repairing, graveling, rocking, blading, or maintaining an existing highway or road does not constitute reconstruction. This subsection shall not apply to claims based upon gross negligence.

9. Any claim based upon or arising out of a claim of negligent design or specification, negligent adoption of design or specification, or negli-

gent construction or reconstruction of a public improvement as defined in section 384.37, subsection 19, or other public facility that was constructed or reconstructed in accordance with a generally recognized engineering or safety standard, criteria, or design theory in existence at the time of the construction or reconstruction. A claim under this chapter shall not be allowed for failure to upgrade, improve, or alter any aspect of an existing public improvement or other public facility to new, changed, or altered design standards. This subsection shall not apply to claims based upon gross negligence. This subsection takes effect July 1, 1984, and applies to all cases tried or retried on or after July 1, 1984.

10. Any claim based upon the enforcement of chapter 89B.

11. Any claim for financial loss based upon an act or omission in financial regulation, including but not limited to examinations, inspections, audits, or other financial oversight responsibilities, pursuant to chapters 87, 203, 203A, 203C, 203D, 421B, 486,* 487, and 490 through 553, excluding chapters 540A, 542B, 542C, 543B, 543C, 543D, 544A, and 544B.

This subsection applies to all cases filed on or after July 1, 1986, and does not expand any existing cause of action or create any new cause of action against the state.

12. Any claim based upon the actions of a resident advocate committee member in the performance of duty if the action is undertaken and carried out in good faith.

13. A claim relating to a swimming pool or spa as defined in section 135I.1 which has been inspected in accordance with chapter 135I, or a swimming pool or spa inspection program, which has been established or certified by the state in accordance with that chapter, unless the claim is based upon an act or omission of an officer or employee of the state and the act or omission constitutes actual malice or a criminal offense.

14. Any claim arising in respect to technical assistance provided by the department of education pursuant to section 279.14A.

2001 Acts, 2nd Ex. ch 1, §26, 28

*Chapter 486 repealed effective January 1, 2001, by 98 Acts, ch 1201, §78; chapter 486A probably intended; corrective legislation is pending

For future amendment to subsection 11 effective July 1, 2002, see 2001 Acts, ch 55, §35, 38

2001 amendments to subsection 7 take effect November 14, 2001, and apply retroactively to and after September 11, 2001; 2001 Acts, 2nd Ex. ch 1, §28

Subsection 7 amended

CHAPTER 672

DONATIONS OF PERISHABLE FOOD

672.1 Donations of perishable food — donor liability — penalty.

1. As used in this section unless the context

otherwise requires:

a. "Canned foods" means canned foods that have been hermetically sealed or commercially

processed and prepared for human consumption.

b. “Charitable or nonprofit organization” means an organization which is exempt from federal or state income taxation, except that the term does not include organizations which sell or offer to sell donated items of food. The assessment of a nominal fee or request for a donation in connection with the distribution of food by the charitable or nonprofit organization is not a sale.

c. “Gleaner” means a person who harvests, for free distribution, an agriculture crop that has been donated by the owner.

d. “Perishable food” means food which may spoil or otherwise become unfit for human consumption because of its nature or type of physical condition. This term includes, but is not limited to, fresh and processed meats, poultry, seafood, dairy products, eggs in the shell, fresh fruits and vegetables, and foods which have been packaged, refrigerated, or frozen.

2. A gleaner, or a restaurant, food establishment, food service establishment, school, manufacturer of foodstuffs, meat and poultry establishment licensed pursuant to chapter 189A, or other person who, in good faith, donates food to a charitable or nonprofit organization for ultimate free distribution to needy individuals is not subject to criminal or civil liability arising from the condition of the food if the donor reasonably inspects the food at the time of the donation and finds the food fit for human consumption. The immunity provided by this subsection does not extend to a donor or gleaner if damages result from the negligence, recklessness, or intentional misconduct of the donor, or if the donor or gleaner has, or should have had, actual or constructive knowledge that the food is tainted, contaminated, or harmful to the health or well-being of the ultimate recipient.

3. A bona fide charitable or nonprofit organization which receives, in good faith, donated

food for ultimate distribution to needy individuals either for free or for a nominal fee is not subject to criminal or civil liability arising from the condition of the food, if the charitable or nonprofit organization reasonably inspects the food at the time of donation and at the time of distribution and finds the food fit for human consumption. The immunity provided by this subsection does not extend to a charitable or nonprofit organization if damages result from the negligence, recklessness, or intentional misconduct of the charitable or nonprofit organization or if the charitable or nonprofit organization has or should have had actual or constructive knowledge that the food is tainted, contaminated, or harmful to the health or well-being of the ultimate recipient.

4. The immunity provided by this section is applicable to the good faith donation of canned or perishable food or farm products not readily marketable due to appearance, freshness, grade, surplus or other considerations, but does not apply to canned goods that are defective or cannot be otherwise offered for sale to members of the general public. This does not restrict the authority of a lawful agency to otherwise regulate or ban the use of such food for human consumption. Charitable or nonprofit organizations which regularly accept donated food for distribution pursuant to this section shall request the appropriate local health authorities to inspect the food at regular intervals.

5. A person, including an employee or volunteer for a charitable or nonprofit organization, who sells, or offers to sell, for profit, food that the person knows to be donated pursuant to this section is guilty of a simple misdemeanor. For purposes of this subsection, the assessment of a nominal fee or request for a donation by the charitable or nonprofit organization is not a sale.

2001 Acts, ch 23, §2
Subsection 2 amended

CHAPTER 682

STRUCTURED SETTLEMENT PROTECTION

Chapter applies to transfers of payment rights under agreements entered into on or after the thirtieth day after July 1, 2001; effectiveness of transfers under agreements reached prior to date that chapter applies not implied; 2001 Acts, ch 85, §8

682.1 Short title.

This chapter shall be known and may be cited as the “Structured Settlement Protection Act”.

2001 Acts, ch 85, §1, 8
NEW section

682.2 Definitions.

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

1. “Annuity issuer” means an issuer that has issued an insurance contract used to fund periodic payments under a structured settlement.

2. “Dependents” means a payee’s spouse and minor children and all other family members and other persons for whom the payee is legally obligated to provide support, including alimony.

3. “Discounted present value” means the fair present value of future payments, as determined

by discounting such payments to the present using the most recently published applicable federal rate for determining the present value of an annuity, as issued by the United States internal revenue service.

4. “*Gross advance amount*” means the sum payable to the payee or for the payee’s account as consideration for a transfer of structured settlement payment rights before any reductions for transfer expenses or other deductions to be made from such consideration.

5. “*Independent professional advice*” means advice of an attorney, certified public accountant, actuary, or other licensed professional advisor.

6. “*Interested parties*” means, with respect to a structured settlement, the payee, a beneficiary irrevocably designated under the annuity contract to receive payments following the payee’s death, the annuity issuer, the structured settlement obligor, and any other party that has continuing rights or obligations under the structured settlement.

7. “*Net advance amount*” means the gross advance amount less the aggregate amount of the actual and estimated transfer expenses required to be disclosed under section 682.3, subsection 5.

8. “*Payee*” means an individual who is receiving tax-free payments under a structured settlement and proposes to make a transfer of payment rights.

9. “*Periodic payments*” means both recurring payments and scheduled future lump sum payments.

10. “*Qualified assignment agreement*” means an agreement providing for a qualified assignment within the meaning of section 130 of the Internal Revenue Code.

11. “*Responsible administrative authority*” means, with respect to a structured settlement, any government authority vested by law with exclusive jurisdiction over the settled claim resolved by the structured settlement.

12. “*Settled claim*” means the original tort claim or workers’ compensation claim resolved by a structured settlement.

13. “*Structured settlement*” means an arrangement for periodic payment of damages for personal injuries established by settlement or judgment in resolution of a tort claim or for periodic payments in settlement of a workers’ compensation claim.

14. “*Structured settlement agreement*” means the agreement, judgment, stipulation, or release embodying the terms of a structured settlement.

15. “*Structured settlement obligor*” means, with respect to a structured settlement, the party that has the continuing periodic payment obligation to the payee under a structured settlement agreement or a qualified assignment agreement.

16. “*Structured settlement payment rights*” means rights to receive periodic payments under a structured settlement, whether from the structured settlement obligor or the annuity issuer, if

any of the following exists:

a. One of the following is true:

(1) The payee is domiciled in this state.

(2) The domicile or principal place of business of a structured settlement obligor or the annuity issuer is located in this state.

b. The structured settlement agreement was approved by a court or responsible administrative authority in this state.

c. The structured settlement agreement is expressly governed by the laws of this state.

17. “*Terms of the structured settlement*” means, with respect to a structured settlement, the terms of the structured settlement agreement, the annuity contract, any qualified assignment agreement, and any order or approval of any court or responsible administrative authority or other government authority authorizing or approving the structured settlement.

18. “*Transfer*” means any sale, assignment, pledge, hypothecation, or other alienation or encumbrance of structured settlement payment rights made by a payee for consideration. “*Transfer*” does not include the creation or perfection of a security interest in structured settlement payment rights under a blanket security agreement entered into with an insured depository institution, in the absence of any action to redirect the structured settlement payments to such insured depository institution, or an agent or successor in interest thereof, or otherwise to enforce such blanket security interest against the structured settlement payment rights.

19. “*Transfer agreement*” means the agreement providing for transfer of structured settlement payment rights.

20. “*Transferee*” means a party acquiring or proposing to acquire structured settlement payment rights through a transfer.

21. “*Transfer expenses*” means all expenses of a transfer that are required under the transfer agreement to be paid by the payee or deducted from the gross advance amount, including, without limitation, court filing fees, attorney fees, escrow fees, lien recordation fees, judgment and lien search fees, finders’ fees, commissions, and other payments to a broker or other intermediary. “*Transfer expenses*” does not include preexisting obligations of the payee payable for the payee’s account from the proceeds of a transfer.

2001 Acts, ch 85, §2, 8
NEW section

682.3 Required disclosures to payee.

Not less than three days prior to the date on which a payee signs a transfer agreement, the transferee shall provide to the payee a separate disclosure statement, in bold type no smaller than fourteen points, setting forth all of the following:

1. The amounts and due dates of the structured settlement payments to be transferred.

2. The aggregate amount of the structured set-

tlement payments.

3. The discounted present value of the payments to be transferred which shall be identified as the “*calculation of current value of the transferred structured settlement payments under federal standards for valuing annuities*”, and the amount of the applicable federal rate used in calculating the discounted present value.

4. The gross advance amount.

5. An itemized listing of all applicable transfer expenses, other than attorney fees and related disbursements payable in connection with the transferee’s application for approval of the transfer, and the transferee’s best estimate of the amount of any such fees and disbursements.

6. The net advance amount.

7. The amount of any penalties or liquidated damages payable by the payee in the event of any breach of the transfer agreement by the payee.

8. A statement that the payee has the right to cancel the transfer agreement, without penalty or further obligation, not later than the third business day after the agreement is signed by the payee.

2001 Acts, ch 85, §3, 8
NEW section

682.4 Approval of transfers of structured settlement payment rights.

1. A transfer of structured settlement payment rights shall not be effective and a structured settlement obligor or annuity issuer shall not be required to make any payment directly or indirectly to a transferee of structured settlement payment rights unless the transfer has been approved in advance in a final court order or order of a responsible administrative authority based on express findings by such court or responsible administrative authority regarding all of the following:

a. The transfer is in the best interest of the payee, taking into account the welfare and support of the payee’s dependents.

b. The payee has been advised in writing by the transferee to seek independent professional advice regarding the transfer and has either received such advice or knowingly waived such advice in writing.

c. The transfer does not contravene any applicable statute or the order of any court or other government authority.

2. If the structured settlement agreement or transfer agreement includes a provision requiring the terms of the structured settlement agreement or transfer agreement to remain confidential, the court or responsible administrative authority shall conduct in camera proceedings relating to the approval of the transfer agreement and shall not include any financial terms from the structured settlement agreement or the transfer agreement in the order required under subsection 1.

2001 Acts, ch 85, §4, 8
NEW section

682.5 Effects of transfer of structured settlement payment rights.

1. The structured settlement obligor and the annuity issuer shall, as to all parties except the transferee, be discharged and released from any and all liability for the transferred payments.

2. The transferee shall be liable to the structured settlement obligor and the annuity issuer for all of the following:

a. If the transfer contravenes the terms of the structured settlement, any taxes incurred by the structured settlement obligor and the annuity issuer as a consequence of the transfer.

b. Any other liabilities or costs, including reasonable costs and attorney fees, arising from compliance by such parties with the order of the court or responsible administrative authority or arising as a consequence of the transferee’s failure to comply with this chapter.

3. An annuity issuer and the structured settlement obligor shall not be required to divide any periodic payment between the payee and any transferee or assignee or between two or more transferees or assignees.

4. Any further transfer of structured settlement payment rights by the payee may be made only after compliance with all of the requirements of this chapter.

2001 Acts, ch 85, §5, 8
NEW section

682.6 Procedure for approval of transfers.

1. An application under this chapter for approval of a transfer of structured settlement payment rights shall be made by the transferee and may be brought in the county in which the payee resides, in the county in which the structured settlement obligor or the annuity issuer maintains its principal place of business, or in any court or before any responsible administrative authority which approved the structured settlement agreement.

2. Not less than twenty days prior to the scheduled hearing on any application for approval of a transfer of structured settlement payment rights under section 682.4, the transferee shall file with the court or responsible administrative authority and serve on all interested parties a notice of the proposed transfer and the application for its authorization. All of the following shall be included with the notice:

a. A copy of the transferee’s application.

b. A copy of the transfer agreement.

c. A copy of the disclosure statement required under section 682.3.

d. A listing of each of the payee’s dependents, together with each dependent’s age.

e. Notification that any interested party is entitled to support, oppose, or otherwise respond to the transferee’s application, either in person or by counsel, by submitting written comments to the

court or responsible administrative authority, or by participating in the hearing.

f. Notification of the time and place of the hearing and notification of the manner in which and the time by which written responses to the application must be filed, which shall not be less than fifteen days after service of the transferee's notice, in order to be considered by the court or responsible administrative authority.

3. If a structured settlement agreement or transfer agreement includes a provision requiring the terms of the structured settlement agreement or transfer agreement to remain confidential, the financial terms of the structured settlement agreement and the transfer agreement shall be made available to the court or responsible administrative authority for purposes of any in camera proceedings, but shall not be disclosed in the copies of the transfer agreement and disclosure statement filed as a part of the public record.

2001 Acts, ch 85, §6, 8
NEW section

682.7 General provisions — construction — penalties.

1. The provisions of this chapter shall not be waived by a payee.

2. A transfer agreement entered into on or after the thirtieth day after July 1, 2001, by a payee who resides in this state shall provide that disputes under the transfer agreement, including any claim that the payee has breached the agreement, shall be determined under the laws of this state. A transfer agreement shall not authorize the transferee or any other party to confess judgment or consent to entry of judgment against the payee.

3. A transfer of structured settlement payment rights shall not extend to any payments that are life-contingent unless, prior to the date on which the payee signs the transfer agreement, the transferee has established and has agreed to maintain procedures reasonably satisfactory to the annuity issuer and the structured settlement obligor for both of the following:

a. Periodically confirming the payee's survival.

b. Giving the annuity issuer and the structured settlement obligor prompt written notice in the event of the payee's death.

4. A payee who proposes to make a transfer of structured settlement payment rights shall not incur any penalty, forfeit any application fee or other payment, or otherwise incur any liability to the proposed transferee or any assignee based on any failure of the transfer to satisfy the conditions of this chapter.

5. This chapter shall not be construed to authorize any transfer of structured settlement payment rights in contravention of any law or to imply that any transfer under a transfer agreement entered into prior to July 1, 2001, is valid or invalid.

6. Compliance with the requirements set forth in section 682.3 and fulfillment of the conditions set forth in section 682.4 shall be solely the responsibility of the transferee in any transfer of structured settlement payment rights, and neither the structured settlement obligor nor the annuity issuer shall bear any responsibility for, or any liability arising from, noncompliance with the requirements or failure to fulfill the conditions.

2001 Acts, ch 85, §7
NEW section

CHAPTER 691

STATE CRIMINALISTICS LABORATORY AND MEDICAL EXAMINER

691.5 State medical examiner.

The office and position of state medical examiner is established for administrative purposes within the Iowa department of public health. Other state agencies shall cooperate with the state medical examiner in the use of state-owned facilities when appropriate for the performance of nonadministrative duties of the state medical examiner. The state medical examiner shall be a physician and surgeon or osteopathic physician and surgeon, be licensed to practice medicine in the state of Iowa, and be board certified or eligible to be board certified in anatomic and forensic pathology by the American board of pathology. The state medical examiner shall be appointed by and serve at the pleasure of the director of public health upon the advice of and in consultation with the director of public safety and the governor. The state

medical examiner, in consultation with the director of public health, shall be responsible for developing and administering the medical examiner's budget and for employment of medical examiner staff and assistants. The state medical examiner may be a faculty member of the university of Iowa college of medicine or the college of law at the university of Iowa, and any of the examiner's assistants or staff may be members of the faculty or staff of the university of Iowa college of medicine or the college of law at the university of Iowa.

2001 Acts, ch 74, §20
Section amended

691.6A Deputy state medical examiner — creation and duties.

The position of deputy state medical examiner is created within the office of the state medical ex-

aminer. The deputy state medical examiner shall report to and be responsible to the state medical examiner. The deputy state medical examiner shall meet the qualification criteria established in section 691.5 for the state medical examiner and shall be subject to rules adopted by the state medical examiner as provided in section 691.6, subsection 3. The state medical examiner and the deputy state medical examiner shall function as a team, providing peer review as necessary, fulfilling each other's job responsibilities during times of absence, and working jointly to provide services and education to county medical examiners, law enforcement officials, hospital pathologists, and other individuals and entities. The deputy medical

examiner may be, but is not required to be, a full-time salaried faculty member of the department of pathology of the university of Iowa college of medicine. If the medical examiner is a full-time salaried faculty member of the department of pathology of the university of Iowa college of medicine, the Iowa department of public health and the state board of regents shall enter into a chapter 28E agreement to define the activities and functions of the deputy medical examiner, and to allocate deputy medical examiner costs, consistent with the requirements of this section.

2001 Acts, ch 74, §21
Section amended

CHAPTER 692A

SEX OFFENDER REGISTRY

692A.1 Definitions.

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

1. "*Aggravated offense*" means a conviction for any of the following offenses:

a. Sexual abuse in the first degree in violation of section 709.2.

b. Sexual abuse in the second degree in violation of section 709.3.

c. Sexual abuse in the third degree in violation of section 709.4, subsection 1.

d. Lascivious acts with a child in violation of section 709.8, subsection 1.

e. Assault with intent to commit sexual abuse in violation of section 709.11.

f. Burglary in the first degree in violation of section 713.3, subsection 1, paragraph "d".

g. Kidnapping, if sexual abuse as defined in section 709.1 is committed during the offense.

h. Murder, if sexual abuse as defined in section 709.1 is committed during the offense.

i. Criminal transmission of human immunodeficiency virus in violation of section 709C.1, subsection 1, paragraph "a".

2. "*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.

3. "*Criminal or juvenile justice agency*" means an agency or department of any level of govern-

ment 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.

4. "*Criminal offense against a minor*" means any of the following criminal offenses or conduct:

a. Kidnapping of a minor, except for the kidnapping of a minor in the third degree committed by a parent.

b. False imprisonment of a minor, except if 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. Incest committed against a minor.

j. Dissemination and exhibition of obscene material to minors in violation of section 728.2.

k. Admitting minors to premises where obscene material is exhibited in violation of section 728.3.

l. Stalking in violation of section 708.11, subsection 3, paragraph "b", subparagraph (3), if the fact-finder determines by clear and convincing evidence that the offense was sexually motivated.

m. Sexual exploitation of a minor in violation of section 728.12, subsection 2 or 3.

n. Enticing away a minor in violation of section 710.10, subsection 1.

o. An indictable offense committed in another

jurisdiction which would constitute an indictable offense under paragraphs “a” through “n”.

5. “*Department*” means the department of public safety.

6. “*Other relevant offense*” means any of the following offenses:

a. Telephone dissemination of obscene materials in violation of section 728.15.

b. Rental or sale of hard-core pornography in violation of section 728.4.

c. Indecent exposure in violation of section 709.9.

d. A criminal offense committed in another jurisdiction which would constitute an indictable offense under paragraphs “a” through “c” if committed in this state.

7. “*Residence*” means the place where a person sleeps, which may include more than one location, and may be mobile or transitory.

8. “*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, attempted murder, kidnapping, burglary, or manslaughter.

e. A criminal offense committed in another jurisdiction which would constitute an indictable offense under paragraphs “a” through “d” if committed in this state.

9. “*Sexual exploitation*” means sexual exploitation by a counselor or therapist under section 709.15.

10. “*Sexually violent predator*” means 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, 42 U.S.C. § 14071(a)(3)(B), (C), (D), and (E).

2001 Acts, ch 17, §1, 2; 2001 Acts, ch 73, §1, 2
Legislative intent for development of single contact repository; 98 Acts, ch 1217, §36

Subsection 1, NEW paragraph i

Subsection 4, NEW paragraph n and former paragraph n amended and redesignated as paragraph o

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 5, 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.

Section not amended; internal reference change applied

CHAPTER 702

DEFINITIONS

702.8 Death.

“*Death*” means the condition determined by the following standard: A person will be considered dead if in the announced opinion of a physician licensed pursuant to chapter 148, 150, or 150A, a physician assistant licensed pursuant to chapter 148C, or a registered nurse or a licensed practical nurse licensed pursuant to chapter 152, based on ordinary standards of medical practice, that person has experienced an irreversible cessation of spontaneous respiratory and circulatory func-

tions. In the event that artificial means of support preclude a determination that these functions have ceased, a person will be considered dead if in the announced opinion of two physicians, based on ordinary standards of medical practice, that person has experienced an irreversible cessation of spontaneous brain functions. Death will have occurred at the time when the relevant functions ceased.

2001 Acts, ch 113, §5
Section amended

702.11 Forcible felony.

1. A “*forcible felony*” is any felonious child endangerment, assault, murder, sexual abuse, kidnapping, robbery, arson in the first degree, or burglary in the first degree.
2. Notwithstanding subsection 1, the following offenses are not forcible felonies:
 - a. Willful injury in violation of section 708.4, subsection 2.
 - b. Sexual abuse in the third degree committed

between spouses.

- c. Sexual abuse in violation of section 709.4, subsection 2, paragraph “c”, subparagraph (4).
 - d. Sexual exploitation by a counselor or therapist in violation of section 709.15.
 - e. Child endangerment resulting in bodily injury to a child or a minor in violation of section 726.6, subsection 5.
- 2001 Acts, ch 3, §1; 2001 Acts, ch 176, §79
Subsection 2, NEW paragraph e

CHAPTER 704

FORCE — REASONABLE OR DEADLY — DEFENSES

704.8 Escape from place of confinement.

A correctional officer or peace officer is justified in using reasonable force, including deadly force, which is necessary to prevent the escape of any person from any jail, penal institution, correctional facility, or similar place of confinement, or place of trial or other judicial proceeding, or to prevent the escape from custody of any person who is being

transported from any such place of confinement, trial or judicial proceeding to any other such place, except that deadly force may not be used to prevent the escape of one who the correctional officer or peace officer knows is confined on a charge or conviction of any class of misdemeanor.

2001 Acts, ch 131, §2
Section amended

CHAPTER 710

KIDNAPPING AND RELATED OFFENSES

710.10 Enticing away a minor.

1. A person commits a class “C” felony when, without authority and with the intent to commit sexual abuse or sexual exploitation upon a minor under the age of thirteen, the person entices away the minor under the age of thirteen, or entices away a person reasonably believed to be under the age of thirteen.
2. A person commits a class “D” felony when, without authority and with the intent to commit an illegal act upon a minor under the age of sixteen, the person entices away a minor under the age of sixteen, or entices away a person reasonably believed to be under the age of sixteen.
3. A person commits an aggravated misdemeanor when, without authority and with the intent to commit an illegal act upon a minor under the age of sixteen, the person attempts to entice away a minor under the age of sixteen, or attempts

- to entice away a person reasonably believed to be under the age of sixteen.
4. A person’s intent to commit a violation of this section may be inferred when the person is not known to the person being enticed away and the person does not have the permission of the parent, guardian, or custodian to contact the person being enticed away.
 5. For purposes of determining jurisdiction under section 803.1, an offense is considered committed in this state if the communication to entice away a minor or a person believed to be a minor who is present in this state originates from another state, or the communication to entice away a minor or a person believed to be a minor is sent from this state.
- 2001 Acts, ch 17, §3
Section amended

CHAPTER 713

BURGLARY

713.6A Burglary in the third degree.

1. All burglary which is not burglary in the first degree or burglary in the second degree is

burglary in the third degree. Burglary in the third degree is a class “D” felony, except as provided in subsection 2.

2. Burglary in the third degree involving a burglary of an unoccupied motor vehicle or motor truck as defined in section 321.1, or a vessel defined in section 462A.2, is an aggravated misdemeanor for a first offense. A second or subsequent conviction under this section is punishable under subsection 1.

2001 Acts, ch 165, §1
Section amended

713.6B Attempted burglary in the third degree.

1. All attempted burglary which is not at-

tempted burglary in the first degree or attempted burglary in the second degree is attempted burglary in the third degree. Attempted burglary in the third degree is an aggravated misdemeanor, except as provided in subsection 2.

2. Attempted burglary in the third degree involving an attempted burglary of an unoccupied motor vehicle or motor truck as defined in section 321.1, or a vessel defined in section 462A.2, is a serious misdemeanor for a first offense. A second or subsequent conviction under this section is punishable under subsection 1.

2001 Acts, ch 165, §2
Section amended

CHAPTER 714

THEFT, FRAUD, AND RELATED OFFENSES

714.16 Consumer frauds.

1. Definitions:

a. The term “*advertisement*” includes the attempt by publication, dissemination, solicitation, or circulation to induce directly or indirectly any person to enter into any obligation or acquire any title or interest in any merchandise.

b. “*Buyer*”, as used in subsection 2, paragraph “*h*”, means the person to whom the water system is being sold, leased, or rented.

c. “*Consumer information pamphlet*” means a publication which explains water quality, health effects, quality expectations for drinking water, and the effectiveness of water treatment systems.

d. “*Consummation of sale*” means completion of the act of selling, leasing, or renting.

e. “*Contaminant*” means any particulate, chemical, microbiological, or radiological substance in water which has a potentially adverse health effect and for which a maximum contaminant level (MCL) or treatment technique requirement or an action level established in lieu of a maximum contaminant level (MCL), has been specified in the national primary drinking water regulations.

f. “*Deception*” means an act or practice which has the tendency or capacity to mislead a substantial number of consumers as to a material fact or facts.

g. “*Label*”, as used in subsection 2, paragraph “*h*”, means the written, printed, or graphic matter permanently affixed or attached to or printed on the water treatment system.

h. “*Manufacturer’s performance data sheet*” means a booklet, document, or other printed material containing, at a minimum, the information required pursuant to subsection 2, paragraph “*h*”.

i. The term “*merchandise*” includes any objects, wares, goods, commodities, intangibles, securities, bonds, debentures, stocks, real estate or services.

j. The term “*person*” includes any natural person or the person’s legal representative, partnership, corporation (domestic and foreign), company, trust, business entity or association, and any agent, employee, salesperson, partner, officer, director, member, stockholder, associate, trustee or cestui que trust thereof.

k. The term “*sale*” includes any sale, offer for sale, or attempt to sell any merchandise for cash or on credit.

l. “*Seller*”, as used in subsection 2, paragraph “*h*”, means the person offering the water treatment system for sale, lease, or rent.

m. The term “*subdivided lands*” refers to improved or unimproved land or lands divided or proposed to be divided for the purpose of sale or lease, whether immediate or future, into five or more lots or parcels; provided, however, it does not apply to the leasing of apartments, offices, stores or similar space within an apartment building, industrial building or commercial building unless an undivided interest in the land is granted as a condition precedent to occupying space in said structure.

n. “*Unfair practice*” means an act or practice which causes substantial, unavoidable injury to consumers that is not outweighed by any consumer or competitive benefits which the practice produces.

o. “*Water treatment system*” means a device or assembly for which a claim is made that it will improve the quality of drinking water by reducing one or more contaminants through mechanical, physical, chemical, or biological processes or combinations of the processes. As used in this paragraph and in subsection 2, paragraph “*h*”, each model of a water treatment system shall be deemed a distinct water treatment system.

2. a. The act, use or employment by a person of an unfair practice, deception, fraud, false pretense, false promise, or misrepresentation, or the concealment, suppression, or omission of a materi-

al fact with intent that others rely upon the concealment, suppression, or omission, in connection with the lease, sale, or advertisement of any merchandise or the solicitation of contributions for charitable purposes, whether or not a person has in fact been misled, deceived, or damaged, is an unlawful practice.

It is deceptive advertising within the meaning of this section for a person to represent in connection with the lease, sale, or advertisement of any merchandise that the advertised merchandise has certain performance characteristics, accessories, uses, or benefits or that certain services are performed on behalf of clients or customers of that person if, at the time of the representation, no reasonable basis for the claim existed. The burden is on the person making the representation to demonstrate that a reasonable basis for the claim existed.

A retailer who uses advertising for a product, other than a drug or other product claiming to have a health related benefit or use, prepared by a supplier shall not be liable under this section unless the retailer participated in the preparation of the advertisement; knew or should have known that the advertisement was deceptive, false, or misleading; refused to withdraw the product from sales upon the request of the attorney general pending a determination of whether the advertisement was deceptive, false, or misleading; refused upon the request of the attorney general to provide the name and address of the supplier; or refused to cooperate with the attorney general in an action brought against the supplier under this section.

“Material fact” as used in this subsection does not include repairs of damage to or adjustments on or replacements of parts with new parts of otherwise new merchandise if the repairs, adjustments or replacements are made to achieve compliance with factory specifications and are made before sale of the merchandise at retail and the actual cost of any labor and parts charged to or performed by a retailer for any such repairs, adjustments and parts does not exceed three hundred dollars or ten percent of the actual cost to a retailer including freight of the merchandise, whichever is less, providing that the seller posts in a conspicuous place notice that repairs, adjustments or replacements will be disclosed upon request. The exemption provided in this paragraph does not apply to the concealment, suppression or omission of a material fact if the purchaser requests disclosure of any repair, adjustment or replacement.

b. The advertisement for sale, lease or rent, or the actual sale, lease, or rental of any merchandise at a price or with a rebate or payment or other consideration to the purchaser which is contingent upon the procurement of prospective customers provided by the purchaser, or the procurement of sales, leases, or rentals to persons suggested by the purchaser, is declared to be an unlawful practice rendering any obligation incurred by the buy-

er in connection therewith, completely void and a nullity. The rights and obligations of any contract relating to such contingent price, rebate, or payment shall be interdependent and inseverable from the rights and obligations relating to the sale, lease, or rental.

c. It is an unlawful practice for any person to advertise the sale of merchandise at reduced rates due to the cessation of business operations and after the date of the first such advertisement remain in business under the same or substantially the same ownership, or under the same or substantially the same trade name, or to continue to offer for sale the same type of merchandise at the same location for more than one hundred twenty days. As used in this paragraph *“person”* includes a person who acquires an ownership interest in the business either within sixty days before the initial advertisement of the sale or at any time after the initial advertisement of the sale. In addition, a person acquiring an ownership interest shall comply with paragraph *“g”* if the person adds additional merchandise to the sale.

d. (1) No person shall offer or advertise within this state for sale or lease, any subdivided lands without first filing with the real estate commission true and accurate copies of all road plans, plats, field notes, and diagrams of water, sewage, and electric power lines as they exist at the time of the filing, however, this filing is not required for a subdivision subject to section 306.21 or chapter 354. A filing shall be accompanied by a fee of fifty dollars for each subdivision included, payable to the real estate commission.

(2) False or misleading statements filed pursuant to subparagraph (1) or section 306.21 or chapter 354, and advertising, offers to sell, or contracts not in substantial conformity with the filings made pursuant to section 306.21 or chapter 354 are unlawful.

e. Any violations of chapter 123 or any other provisions of law by a manufacturer, distiller, vintner, importer, or any other person participating in the distribution of alcoholic liquor or beer as defined in chapter 123.

f. A violation of a provision of sections 535C.1 through 535C.10 is an unlawful practice.

g. It is an unlawful practice for a person to acquire directly or indirectly an interest in a business which has either gone out of business or is going out of business and conduct or continue a going-out-of-business sale where additional merchandise has been added to the merchandise of the liquidating business for the purposes of the sale, unless the person provides a clear and conspicuous notice in all advertisements that merchandise has been added. The advertisement shall also state the customary retail price of the merchandise that has been added or brought in for the sale. The person acquiring the interest shall obtain a permit to hold the sale before commencing the sale. If the sale is to be held in a city which has an

ordinance regulating going-out-of-business sales, then the permit shall be obtained from the city. If the sale is to be located outside of a city or in a city which does not have an ordinance regulating going-out-of-business sales, then the permit shall be obtained from the county in which the proposed sale is to be held. The county board of supervisors shall prescribe the procedures necessary to obtain the permit. The permit shall state the percentage of merchandise for sale that was obtained from the liquidating business and the percentage of merchandise for sale that was added from other sources. The permit or an accurate reproduction of the permit shall be clearly and conspicuously posted at all entrances to the site of the sale and at all locations where sales are consummated. A person who violates this paragraph, including any misrepresentation of the presence and the percentage of additional merchandise that had been added to that of the liquidating company, is liable for a civil penalty of not to exceed one thousand dollars for each day of each violation. The civil penalties collected shall be deposited in the general fund of the political entity which prosecutes the violation. The civil penalty is in addition to and not in lieu of any criminal penalty. A political entity enforcing this paragraph may obtain a preliminary injunction without posting a bond to enjoin a violation of paragraph "c" and this paragraph pending a hearing.

This paragraph does not prohibit a city or county from adopting an ordinance prohibiting the conducting of a going-out-of-business sale in which additional merchandise is added to the merchandise of the liquidating business for the purposes of the sale.

h. It is an unlawful practice for a person to sell, lease, rent, or advertise the sale, lease, or rental of a water treatment system in this state, for which claims or representations of removing health-related contaminants are made, unless the water treatment system:

(1) Has been performance tested by a third-party testing agency that has been authorized by the Iowa department of public health. Alternatively, in lieu of third-party performance testing of the manufacturer's water treatment system, the manufacturer may rely upon the manufacturer's own test data after approval of the data by an accepted third-party evaluator as provided in this subparagraph. The Iowa department of public health shall review the qualifications of a third-party evaluator proposed by the manufacturer. The department may accept or reject a proposed third-party evaluator based upon the required review. If a third-party evaluator, accepted by the Iowa department of public health, finds that the manufacturer's test data is reliable, adequate, and fairly presented, the manufacturer may rely upon that data to satisfy the requirements of this subparagraph after filing a copy of the test data and the report of the third-party evaluator with

the Iowa department of public health. The testing agency shall use, or the evaluator shall review for the use of, approved methods of performance testing determined to be appropriate by the state hygienic laboratory.

(2) Has met the performance testing requirements specified in the testing protocol.

(3) Bears a conspicuous and legible label stating, "*IMPORTANT NOTICE — Read the Manufacturer's Performance Data Sheet*" and is accompanied by a manufacturer's performance data sheet.

The manufacturer's performance data sheet shall be given to the buyer and shall be signed and dated by the buyer and the seller prior to the consummation of the sale of the water treatment system. The manufacturer's performance data sheet shall contain information including, but not limited to:

(a) The name, address, and telephone number of the seller.

(b) The name, brand, or trademark under which the unit is sold, and its model number.

(c) Performance and test data including, but not limited to, the list of contaminants certified to be reduced by the water treatment system; the test influent concentration level of each contaminant or surrogate for that contaminant; the percentage reduction or effluent concentration of each contaminant or surrogate; where applicable, the maximum contaminant level (MCL) or a treatment technique requirement or an action level established in lieu of a maximum contaminant level (MCL) specified in the national primary drinking water regulations; where applicable, the approximate capacity in gallons; where applicable, the period of time during which the unit is effective in reducing contaminants based upon the contaminant or surrogate influent concentrations used for the performance tests; where applicable, the flow rate, pressure, and operational temperature of the water during the performance tests.

(d) Installation instructions.

(e) The recommended operational procedures and requirements necessary for the proper operation of the unit including, but not limited to, electrical requirements; maximum and minimum pressure; flow rate; temperature limitations; maintenance requirements; and where applicable, replacement frequencies.

(f) The seller's limited warranty.

(4) Is accompanied by the consumer information pamphlet compiled by the Iowa department of public health.

The consumer information pamphlet provided to the buyer of a water treatment system shall be compiled by the Iowa department of public health, reviewed annually, and updated as necessary. The consumer information pamphlet shall be distributed to persons selling water treatment systems and the costs of the consumer information pamphlet shall be borne by persons selling water treat-

ment systems. The Iowa department of public health shall adopt rules pursuant to chapter 17A and charge all fees necessary to administer this section.

i. It is an unlawful practice for a person to sell, lease, rent, or advertise the sale, lease, or rental of a water treatment system in this state for which false or deceptive claims or representations of removing health-related contaminants are made.

j. It is an unlawful practice for a person to make any representation or claim that the seller's water treatment system has been approved or endorsed by any agency of the state.

k. It is an unlawful practice for a supplier to commit a deceptive act or practice under chapter 537B.

l. It is an unlawful practice for a repair facility or manufacturer or distributor of aftermarket crash parts, as defined in section 537B.4, to commit a deceptive act or practice under chapter 537B.

m. It is an unlawful practice for a person to advertise the sale of wood products without disclosing information which may affect the price of the product.

An advertisement for all plywood and dimension lumber products shall include the grade and species, in accordance with federal products standards 1 and 20, and the measure. The products advertised shall also be labeled according to the federal products standards.

An advertisement for any other wood product shall include the grade and species, according to the applicable federal product standards, and the measure. These products need not be labeled.

An advertisement for any wood products must also include the following:

(1) The condition of the wood product, including but not limited to the following designations:

- (a) Green.
- (b) Kiln-dried.
- (c) Air-dried or partially air-dried.

(2) Whether the wood product consists of seconds, culls, shop grade, or ungraded material.

Use of any contrived or unrecognized grading standard is prohibited, and any factors affecting the final delivered price of the products shall be disclosed and displayed in a conspicuous place.

This paragraph applies only to persons who offer wood products for sale in the ordinary course of business, except that this paragraph does not apply to any person who produces rough-sawn lumber, commonly referred to as native lumber, in this state. For purposes of this paragraph:

"Dimension lumber" means softwood lumber nominally referred to as *"two inch by four inch"* or greater.

"Labeling" means all labels and other written, printed, branded, or graphic matter upon any building material.

"Plywood" means a structural material consisting of sheets or chips of wood glued or cemented to-

gether.

"Wood products" means any wood products derived from trees as a result of any work or manufacturing process upon the wood, and intended primarily for use as a building material.

n. (1) It is an unlawful practice for a person to misrepresent the geographic location of a supplier or a service or product by listing a fictitious business name or an assumed business name in a local telephone directory or directory assistance database if all of the following apply:

(a) The name purportedly represents the geographic location of the supplier.

(b) The listing does not identify the address, including the city and state, of the supplier.

(c) Calls made to a local telephone number are routinely forwarded to or otherwise transferred to a business location that is outside the local calling area covered by the local telephone directory or directory assistance database.

(2) A telephone company, provider of directory assistance, publisher of a local telephone directory, or officer, employee, or agent of such company, provider, or publisher shall not be liable in a civil action under this section for publishing in any directory or directory assistance database the listing of a fictitious or assumed business name of a person in violation of subparagraph (1) unless the telephone company, directory assistance provider, directory publisher, or officer, employee, or agent of the company, provider, or publisher is the person committing such violation.

(3) For purposes of this paragraph:

(a) *"Local telephone directory"* means a telephone classified advertising directory or the business section of a telephone directory that is distributed free of charge to some or all telephone subscribers in a local area.

(b) *"Local telephone number"* means a telephone number that has a three-number prefix used by the provider of telephone service for telephone customers physically located within the area covered by the local telephone directory in which the number is listed. The term does not include long distance numbers or 800, 888, or 900 exchange numbers listed in the telephone directory.

3. When it appears to the attorney general that a person has engaged in, is engaging in, or is about to engage in any practice declared to be unlawful by this section or when the attorney general believes it to be in the public interest that an investigation should be made to ascertain whether a person in fact has engaged in, is engaging in or is about to engage in, any such practice, the attorney general may:

a. Require such person to file on such forms as the attorney general may prescribe a statement or report in writing under oath or otherwise, as to all the facts and circumstances concerning the sale or advertisement of merchandise by such person, and such other data and information as the attorney general may deem necessary;

b. Examine under oath any person in connection with the sale or advertisement of any merchandise;

c. Examine any merchandise or sample thereof, record, book, document, account or paper as the attorney general may deem necessary; and

d. Pursuant to an order of a district court impound any record, book, document, account, paper, or sample of merchandise that is produced in accordance with this section, and retain the same in the attorney general's possession until the completion of all proceedings in connection with which the same are produced.

4. a. To accomplish the objectives and to carry out the duties prescribed by this section, the attorney general, in addition to other powers conferred upon the attorney general by this section, may issue subpoenas to any person, administer an oath or affirmation to any person, conduct hearings in aid of any investigation or inquiry, prescribe such forms and promulgate such rules as may be necessary, which rules shall have the force of law.

b. Subject to paragraph "c", information, documents, testimony, or other evidence provided to the attorney general by a person pursuant to paragraph "a" or subsection 3, or provided by a person as evidence in any civil action brought pursuant to this section, shall not be admitted in evidence, or used in any manner whatsoever, in any criminal prosecution or forfeiture proceeding against that person. If a criminal prosecution or forfeiture proceeding is initiated in a state court against a person who has provided information pursuant to paragraph "a" or subsection 3, the state shall have the burden of proof that the information provided was not used in any manner to further the criminal investigation, prosecution, or forfeiture proceeding.

c. Paragraph "b" does not apply unless the person has first asserted a right against self-incrimination and the attorney general has elected to provide the person with a written statement that the information, documents, testimony, or other evidence at issue are subject to paragraph "b". After a person has been provided with such a written statement by the attorney general, a claim of privilege against self-incrimination is not a defense to any action or proceeding to obtain the information, documents, testimony, or other evidence. The limitation on the use of evidence in a criminal proceeding contained in this section does not apply to any prosecution or proceeding for perjury or contempt of court committed in the course of the giving or production of the information, documents, testimony, or other evidence.

5. Service by the attorney general of any notice requiring a person to file a statement or report, or of a subpoena upon any person, shall be made personally within this state, but if such cannot be obtained, substituted service therefor may be made in the following manner:

a. Personal service thereof without this state; or

b. The mailing thereof by registered mail to the last known place of business, residence or abode within or without this state of such person for whom the same is intended; or

c. As to any person other than a natural person, in the manner provided in the Rules of Civil Procedure as if a petition had been filed; or

d. Such service as a district court may direct in lieu of personal service within this state.

6. If a person fails or refuses to file a statement or report, or obey any subpoena issued by the attorney general, the attorney general may, after notice, apply to the Polk county district court or the district court for the county in which the person resides or is located and, after hearing, request an order:

a. Granting injunctive relief, restraining the sale or advertisement of any merchandise by such persons.

b. Dissolving a corporation created by or under the laws of this state or revoking or suspending the certificate of authority to do business in this state of a foreign corporation or revoking or suspending any other licenses, permits, or certificates issued pursuant to law to such person which are used to further the allegedly unlawful practice.

c. Granting such other relief as may be required until the person files the statement or report, or obeys the subpoena.

7. A civil action pursuant to this section shall be by equitable proceedings. If it appears to the attorney general that a person has engaged in, is engaging in, or is about to engage in a practice declared to be unlawful by this section, the attorney general may seek and obtain in an action in a district court a temporary restraining order, preliminary injunction, or permanent injunction prohibiting the person from continuing the practice or engaging in the practice or doing an act in furtherance of the practice. The court may make orders or judgments as necessary to prevent the use or employment by a person of any prohibited practices, or which are necessary to restore to any person in interest any moneys or property, real or personal, which have been acquired by means of a practice declared to be unlawful by this section, including the appointment of a receiver in cases of substantial and willful violation of this section. If a person has acquired moneys or property by any means declared to be unlawful by this section and if the cost of administering reimbursement outweighs the benefit to consumers or consumers entitled to the reimbursement cannot be located through reasonable efforts, the court may order disgorgement of moneys or property acquired by the person by awarding the moneys or property to the state to be used by the attorney general for the administration and implementation of this section. Except in an action for the concealment, suppression, or omission of a material fact with intent

that others rely upon it, it is not necessary in an action for reimbursement or an injunction, to allege or to prove reliance, damages, intent to deceive, or that the person who engaged in an unlawful act had knowledge of the falsity of the claim or ignorance of the truth. A claim for reimbursement may be proved by any competent evidence, including evidence that would be appropriate in a class action.

In addition to the remedies otherwise provided for in this subsection, the attorney general may request and the court may impose a civil penalty not to exceed forty thousand dollars per violation against a person found by the court to have engaged in a method, act, or practice declared unlawful under this section; provided, however, a course of conduct shall not be considered to be separate and different violations merely because the conduct is repeated to more than one person. In addition, on the motion of the attorney general or its own motion, the court may impose a civil penalty of not more than five thousand dollars for each day of intentional violation of a temporary restraining order, preliminary injunction, or permanent injunction issued under authority of this section. A penalty imposed pursuant to this subsection is in addition to any penalty imposed pursuant to section 537.6113. Civil penalties ordered pursuant to this subsection shall be paid to the treasurer of state to be deposited in the general fund of the state.

8. When a receiver is appointed by the court pursuant to this section, the receiver shall have the power to sue for, collect, receive and take into possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, records, documents, papers, choses in action, bills, notes and property of every description, derived by means of any practice declared to be illegal and prohibited by this section, including property with which such property has been mingled if it cannot be identified in kind because of such commingling, and to sell, convey, and assign the same and hold and dispose of the proceeds thereof under the direction of the court. Any person who has suffered damages as a result of the use or employment of any unlawful practices and submits proof to the satisfaction of the court that the person has in fact been damaged, may participate with general creditors in the distribution of the assets to the extent the person has sustained out-of-pocket losses. In the case of a partnership or business entity, the receiver shall settle the estate and distribute the assets under the direction of the court. The court shall have jurisdiction of all questions arising in such proceedings and may make such orders and judgments therein as may be required.

9. Subject to an order of the court terminating

the business affairs of any person after receivership proceedings held pursuant to this section, the provisions of this section shall not bar any claim against any person who has acquired any moneys or property, real or personal, by means of any practice herein declared to be unlawful.

10. A civil action pursuant to this section may be commenced in the county in which the person against whom it is brought resides, has a principal place of business, or is doing business, or in the county where the transaction or any substantial portion of the transaction occurred, or where one or more of the victims reside.

11. In an action brought under this section, the attorney general is entitled to recover costs of the court action and any investigation which may have been conducted, including reasonable attorneys' fees, for the use of this state.

12. If any provision of this section or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions of applications of the section which can be given effect without the invalid provision or application and to this end the provisions of this section are severable.

13. The attorney general or the designee of the attorney general is deemed to be a regulatory agency under chapter 692 for the purpose of receiving criminal intelligence data relating to violations of this section.

14. This section does not apply to the newspaper, magazine, publication, or other print media in which the advertisement appears, or to the radio station, television station, or other electronic media which disseminates the advertisement if the newspaper, magazine, publication, radio station, television station, or other print or electronic media has no knowledge of the fraudulent intent, design, or purpose of the advertiser at the time the advertisement is accepted; and provided, further, that nothing herein contained shall apply to any advertisement which complies with the rules and regulations of, and the statutes administered by the federal trade commission.

15. The attorney general may bring an action on behalf of the residents of this state, or as *parens patriae*, under the federal Telemarketing and Consumer Fraud and Abuse Prevention Act, Pub. L. No. 103-297, and pursue any and all enforcement options available under that Act. Subsequent amendments to that Act which do not substantially alter its structure and purpose shall not be construed to affect the authority of the attorney general to pursue an action pursuant to this section, except to the extent the amendments specifically restrict the authority of the attorney general.

2001 Acts, ch 58, §15, 16

Subsection 1, paragraph e amended

Subsection 2, paragraph h, subparagraph (3), subparagraph subdivision

(c) amended

714.19 Nonapplicability.

None of the provisions of sections 714.17 to 714.22 shall apply to the following:

1. Colleges or universities authorized by the laws of Iowa or any other state or foreign country to grant degrees.
2. Schools of nursing accredited by the board of nursing or an equivalent public board of another state or foreign country.
3. Public schools.
4. Private and nonprofit schools recognized by the department of education or a local school board for the purpose of complying with chapter 299 and employing certified teachers.
5. Nonprofit schools exclusively engaged in training persons with physical disabilities in the state of Iowa.

6. Schools and educational programs conducted by firms, corporations, or persons for the training of their own employees, for which no fee is charged.

7. Seminars, refresher courses and schools of instruction sponsored by professional, business, or farming organizations or associations for the members and employees of members of such organizations or associations.

8. Private business schools accredited by the accrediting commission for business schools or an acknowledged accrediting agency.

9. Private college preparatory schools accredited or probationally accredited under section 256.11, subsection 13.

2001 Acts, ch 24, §59
Subsection 2 amended

CHAPTER 717A

OFFENSES RELATING TO AGRICULTURAL PRODUCTION

717A.1 Definitions.

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

1. *“Agricultural animal”* means any of the following:

a. An animal that is maintained for its parts or products having commercial value, including but not limited to its muscle tissue, organs, fat, blood, manure, bones, milk, wool, hide, pelt, feathers, eggs, semen, embryos, or honey.

b. An animal belonging to the equine species, including horse, pony, mule, jenny, donkey, or hinny.

2. *“Agricultural production”* means any activity related to maintaining an agricultural animal at an animal facility or a crop on crop operation property.

3. *“Animal”* means a warm-blooded or cold-blooded animal, including but not limited to an animal belonging to the bovine, canine, feline, equine, ovine, or porcine species; farm deer as defined in section 189A.2; ostriches, rheas, or emus; an animal which belongs to a species of poultry or fish; mink or other pelt-bearing mammals; any invertebrate; or honey bees.

4. *“Animal facility”* means any of the following:

a. A location where an agricultural animal is maintained for agricultural production purposes, including but not limited to a location dedicated to farming as defined in section 9H.1, a livestock market, exhibition, or a vehicle used to transport the animal.

b. 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.

c. A location operated by a person licensed to practice veterinary medicine pursuant to chapter 169.

d. A pound as defined in section 162.2.

e. An animal shelter as defined in section 162.2.

f. A pet shop as defined in section 162.2.

g. A boarding kennel as defined in section 162.2.

h. A commercial kennel as defined in section 162.2.

5. *“Consent”* means express or apparent assent by a person authorized to provide such assent.

6. *a.* *“Crop”* means any plant maintained for its parts or products having commercial value, including but not limited to stalks, trunks and branches, cuttings, grafts, scions, leaves, buds, fruit, vegetables, roots, bulbs, or seeds, if the plant is any of the following:

(1) A plant produced from an agricultural seed or vegetable seed as defined in section 199.1, including any plant producing a commodity listed in section 210.10.

(2) A plant which is a tree, shrub, vine, berry plant, greenhouse plant, or flower.

b. A plant produced from a noxious weed seed as defined in section 199.1 is not a crop unless the plant is produced as a research crop.

7. *“Crop operation”* means a commercial enterprise where a crop is maintained on the property of the commercial enterprise.

8. *“Crop operation property”* means any of the following:

a. Real property that is a crop field, orchard, nursery, greenhouse, garden, elevator, seedhouse, barn, warehouse, any other associated land or structures located on the land, and personal property located on the land including machinery or equipment, that is part of a crop operation.

b. A vehicle used to transport a crop that was maintained on the crop operation property.

9. “*Deprive*” means to do any of the following:

a. For an animal maintained at an animal facility or property belonging to an animal facility, “*deprive*” means to do any of the following:

(1) Withhold the animal or property for a period of time sufficient to significantly reduce the value or enjoyment of the animal or property.

(2) Withhold the animal or property for ransom or upon condition to restore the animal or property in return for compensation.

(3) Dispose of the animal or property in a manner that makes recovery of the animal or property by its owner unlikely.

b. For crops maintained on crop operation property or for crop operation property, “*deprive*” means to do any of the following:

(1) Occupy any part of a crop operation property for a period of time sufficient to prevent access to the crop or crop operation property.

(2) Dispose of a crop maintained on the crop operation property or belonging to the crop operation in a manner that makes recovery of the crop or crop operation property by its owner unlikely.

10. “*Maintain*” means to do any of the following:

a. Keep and provide for the care and feeding of any animal, including any activity relating to confining, handling, breeding, transporting, or exhibiting the animal.

b. Keep and preserve any crop by planting, nurturing, harvesting, and storing the crop; or storing, planting, or nurturing the crop’s seed.

11. “*Owner*” means any of the following:

a. A person, including a public or private entity, who has a legal interest in an animal or property belonging to an animal facility or who is authorized by the holder of the legal interest to act on the holder’s behalf in maintaining the animal.

b. A person, including a public or private entity, who has a legal interest in a crop or crop operation property or who is authorized by the holder of the legal interest to act on the holder’s behalf in maintaining the crop.

12. “*Research crop*” means a crop, including the crop’s seed, that is maintained for purposes of scientific research regarding the study or alteration of the genetic characteristics of a plant or associated seed, including its deoxyribonucleic acid, which is accomplished by breeding or by using biotechnological systems or techniques.

2001 Acts, ch 120, §1

Former §717A.1 transferred to §717A.2

NEW section

717A.2 Animal facilities — civil action — criminal penalties.

1. A person shall not, without the consent of the owner, do any of the following:

a. Willfully destroy property of an animal facility, or kill or injure an animal maintained at an animal facility, including by an act of violence or the transmission of a disease including but not limited to any disease designated by the department of agriculture and land stewardship pursuant to section 163.2.

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) Kill or 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.

2. A person suffering damages resulting from an action which is in violation of subsection 1 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.

3. A person violating this section is guilty of the following penalties:

a. A person who violates subsection 1, 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 1, paragraph “b”, is guilty of a class “D” felony.

c. A person who violates subsection 1, paragraph “c”, is guilty of an aggravated misdemeanor.

4. a. 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.

b. This section does not apply to a governmental agency that is taking lawful action against an animal or animal facility.

c. This section does not apply to a licensed veterinarian practicing veterinary medicine as provided in chapter 169 and according to customary standards of care.

2001 Acts, ch 120, §2 – 5

Section transferred from §717A.1 in Code Supplement 2001

Subsection 1 stricken and former subsections 2 – 5 renumbered as 1 – 4

Subsection 1, paragraph a amended

Subsection 1, paragraph c, subparagraph (2) amended

Subsection 4 amended

717A.3 Crops or crop operation property damage — civil action — criminal penalties.

1. A person shall not, without the consent of the owner, do any of the following:

a. Willfully destroy or damage a crop maintained on crop operation property or crop operation property.

b. Exercise control over a crop maintained on crop operation property or crop operation property with an intent to deprive the owner of the crop or crop operation property.

c. Enter onto or remain on crop operation property if the person has notice that the property is not open to the public, and the person has an intent to do one of the following:

(1) Disrupt agricultural production conducted on the crop operation property if the agricultural production directly relates to the maintenance of crops. A person is presumed to intend disruption if the person moves, removes, or defaces any sign posted on the crop operation property or label used by the owner and the sign or label identifies a crop maintained on the crop operation property.

(2) Destroy or damage a crop or any portion of a crop maintained on the crop operation property.

A person has notice that a crop operation property is not open to the public if the person is provided notice prohibiting entry before the person enters onto the crop operation property, or the person refuses to immediately depart from the crop operation property after being notified 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 a sign posted which is reasonably likely to come to the attention of an intruder and which indicates that entry is prohibited.

2. a. A person suffering damages resulting from an act which is in violation of this section may bring an action in the district court against the person causing the damage to recover all of the following:

(1) For damages that are not to a research crop, an amount equaling three times all actual and consequential losses.

(2) For damages to a research crop, all of the following:

(a) Twice the amount of damages directly incurred by market losses, based on the lost market value of the research crop due to the damage, assuming that the research crop would have matured undamaged and been sold in normal commercial channels. If the research crop has no market value, the damages shall be twice the amount of actual damages incurred in producing, harvesting, and storing the damaged research crop.

(b) Twice the amount of damages directly incurred by developmental losses, based on the losses associated with the research crop’s expected scientific value. The research crop’s scientific value shall be determined by calculating the amount expended in developing the research crop, including costs associated with researching, testing, breeding, or engineering. However, such damages shall not be awarded to the extent that the losses are mitigated by undamaged research crops that have been identically developed.

b. A prevailing plaintiff in an action brought under this section shall be awarded court costs and reasonable attorney fees, which shall be taxed as part of the costs of the action.

3. A person who violates this section as it applies to a research crop or crop operation property where a research crop is maintained is guilty of the following:

a. For a violation of subsection 1, paragraph “a”, the person is guilty of criminal mischief as provided in section 716.1, and commits the same class of offense as provided in sections 716.3 through 716.6 based on the amount of damage to the research crop or crop operation property where the research crop is maintained.

b. For a violation of subsection 1, paragraph “b”, the person is guilty of a class “D” felony.

c. For a violation of subsection 1, paragraph “c”, the person is guilty of an aggravated misdemeanor.

4. A person who violates this section as it applies to a crop other than a research crop or crop operation property where a research crop is not maintained is guilty of the following:

a. For a violation of subsection 1, paragraph “a”, the person is guilty of criminal mischief as provided in section 716.1, and commits the same class of offense as provided in sections 716.3 through 716.6 based on the amount of damage to the crop or crop operation property where the crop is maintained.

b. For a violation of subsection 1, paragraph “b”, the person is guilty of an aggravated misdemeanor.

c. For a violation of subsection 1, paragraph “c”, the person is guilty of a serious misdemeanor.

5. a. This section does not prohibit any conduct of a person holding a legal interest in a crop operation that is superior to the interest held by a

person suffering from damages resulting from the conduct.

b. This section does not apply to a governmental agency that is taking lawful action against a crop or crop operation property.

2001 Acts, ch 120, §6
NEW section

CHAPTER 717C

BESTIALITY

717C.1 Bestiality.

1. For purposes of this section:

a. “*Animal*” means any nonhuman vertebrate, either dead or alive.

b. “*Sex act*” means any sexual contact between a person and an animal by penetration of the penis into the vagina or anus, contact between the mouth and genitalia, or by contact between the genitalia of one and the genitalia or anus of the other.

2. A person who performs a sex act with an animal is guilty of an aggravated misdemeanor.

3. Upon a conviction for a violation of this section, and in addition to any sentence authorized by law, the court shall require the person to submit to a psychological evaluation and treatment at the person’s expense.

2001 Acts, ch 131, §3
NEW section

CHAPTER 721

OFFICIAL MISCONDUCT

721.1 Felonious misconduct in office.

Any public officer or employee, who knowingly does any of the following, commits a class “D” felony:

1. Makes or gives any false entry, false return, false certificate, or false receipt, where such entries, returns, certificates, or receipts are authorized by law.

2. Falsifies any public record, or issues any document falsely purporting to be a public

document.

3. Falsifies a writing, or knowingly delivers a falsified writing, with the knowledge that the writing is falsified and that the writing will become a public record of a government body.

4. For purposes of this section, “*government body*” and “*public record*” mean the same as defined in section 22.1.

2001 Acts, ch 31, §1
NEW subsections 3 and 4

CHAPTER 722

BRIBERY AND CORRUPTION

722.7 Misconduct by election official.

A precinct election official who knowingly does any of the following commits a serious misdemeanor:

1. Furnishes a voter with a ballot other than the proper ballot to be used at that election.

2. Causes a voter to cast a vote contrary to the voter’s intention or wishes.

3. Changes any ballot, or in any way causes

any vote to be recorded contrary to the intent of the person casting that vote.

4. Makes or consents to any false entry on the list of voters or poll books.

5. Places or permits another election official to place into a ballot box anything other than a ballot as provided in section 49.85, or who permits any person other than an election official to place anything into a ballot box.

6. Takes out of a ballot box, or permits to be so taken out, any ballot deposited therein, except in the manner prescribed by law.

7. Destroys or alters any ballot which has been given to an elector.

8. Permits any person to vote in a manner prohibited by law.

9. Refuses or rejects the vote of any registered voter.

10. Wrongfully does any act or refuses to act

for the purpose of avoiding an election, or of rendering invalid the ballots cast from any precinct or other district.

11. Having been deputized to carry the poll books of any election to the place where they are to be canvassed, willfully or negligently fails to deliver them to such place, safe, with seals unbroken, and within the time specified by law.

2001 Acts, ch 56, §38
Subsection 9 amended

CHAPTER 726

PROTECTION OF THE FAMILY AND DEPENDENT PERSONS

726.3 Neglect or abandonment of a dependent person.

A person who is the father, mother, or some other person having custody of a child, or of any other person who by reason of mental or physical disability is not able to care for the person's self, who knowingly or recklessly exposes such person to a hazard or danger against which such person cannot reasonably be expected to protect such person's self or who deserts or abandons such person, knowing or having reason to believe that the person will be exposed to such hazard or danger, commits a class "C" felony. However, a parent or person authorized by the parent who has, in accordance with section 233.2, voluntarily released custody of a newborn infant shall not be prosecuted for a violation of this section involving abandonment of that newborn infant.

2001 Acts, ch 67, §11, 13
Section amended

726.6 Child endangerment.

1. A person who is the parent, guardian, or person having custody or control over a child or a minor under the age of eighteen with a mental or physical disability, or a person who is a member of the household in which a child or such a minor resides, commits child endangerment when the person does any of the following:

a. Knowingly acts in a manner that creates a substantial risk to a child or minor's physical, mental or emotional health or safety.

b. By an intentional act or series of intentional acts, uses unreasonable force, torture or cruelty that results in bodily injury, or that is intended to cause serious injury.

c. By an intentional act or series of intentional acts, evidences unreasonable force, torture or cruelty which causes substantial mental or emotional harm to a child or minor.

d. Willfully deprives a child or minor of necessary food, clothing, shelter, health care or supervision appropriate to the child or minor's age, when the person is reasonably able to make the necessary provisions and which deprivation substan-

tially harms the child or minor's physical, mental or emotional health. For purposes of this paragraph, the failure to provide specific medical treatment shall not for that reason alone be considered willful deprivation of health care if the person can show that such treatment would conflict with the tenets and practice of a recognized religious denomination of which the person is an adherent or member. This exception does not in any manner restrict the right of an interested party to petition the court on behalf of the best interest of the child or minor.

e. Knowingly permits the continuing physical or sexual abuse of a child or minor. However, it is an affirmative defense to this subsection if the person had a reasonable apprehension that any action to stop the continuing abuse would result in substantial bodily harm to the person or the child or minor.

f. Abandons the child or minor to fend for the child or minor's self, knowing that the child or minor is unable to do so.

2. A parent or person authorized by the parent who has, in accordance with section 233.2, voluntarily released custody of a newborn infant shall not be prosecuted for a violation of subsection 1, paragraph "f", relating to abandonment.

3. For the purposes of subsection 1, "*person having control over a child or a minor*" means any of the following:

a. A person who has accepted, undertaken, or assumed supervision of a child or such a minor from the parent or guardian of the child or minor.

b. A person who has undertaken or assumed temporary supervision of a child or such a minor without explicit consent from the parent or guardian of the child or minor.

c. A person who operates a motor vehicle with a child or such a minor present in the vehicle.

4. A person who commits child endangerment resulting in serious injury to a child or minor is guilty of a class "C" felony.

5. A person who commits child endangerment resulting in bodily injury to a child or minor is

guilty of a class “D” felony.

6. A person who commits child endangerment not resulting in bodily injury or serious injury to a child or minor is guilty of an aggravated misdemeanor.

2001 Acts, ch 3, §2 – 5; 2001 Acts, ch 67, §12, 13
 Subsection 1, unnumbered paragraph 1 and paragraph b amended
 NEW subsection 2 and former subsection 2 renumbered as 4
 NEW subsection 3 and former subsection 3 renumbered as 6
 NEW subsection 5
 Subsection 6 amended

CHAPTER 728

OBSCENITY

728.12 Sexual exploitation of a minor.

1. It shall be unlawful to employ, use, persuade, induce, entice, coerce, knowingly permit, or otherwise cause a minor to engage in a prohibited sexual act or in the simulation of a prohibited sexual act. A person must know, or have reason to know, or intend that the act or simulated act may be photographed, filmed, or otherwise preserved in a negative, slide, book, magazine, computer, computer disk, or other print or visual medium, or be preserved in an electronic, magnetic, or optical storage system, or in any other type of storage system. A person who commits a violation of this subsection commits a class “C” felony. Notwithstanding section 902.9, the court may assess a fine of not more than fifty thousand dollars for each offense under this subsection in addition to imposing any other authorized sentence.

2. It shall be unlawful to knowingly promote any material visually depicting a live performance of a minor or what appears to be a minor engaging in a prohibited sexual act or in the simulation of a prohibited sexual act. A person who commits a violation of this subsection commits a class “D” felony. Notwithstanding section 902.9, the court may assess a fine of not more than twenty-five thousand dollars for each offense under this subsection in addition to imposing any other authorized sentence.

3. It shall be unlawful to knowingly purchase or possess a negative, slide, book, magazine, com-

puter, computer disk, or other print or visual medium, or an electronic, magnetic, or optical storage system, or any other type of storage system which depicts a minor or what appears to be a minor engaging in a prohibited sexual act or the simulation of a prohibited sexual act. A person who commits a violation of this subsection commits an aggravated misdemeanor for a first offense and a class “D” felony for a second or subsequent offense. For purposes of this subsection, an offense is considered a second or subsequent offense if, prior to the person’s having been convicted under this subsection, any of the following apply:

a. The person has a prior conviction or deferred judgment under this subsection.

b. The person has a prior conviction, deferred judgment, or the equivalent of a deferred judgment in another jurisdiction for an offense substantially similar to the offense defined in this subsection. The court shall judicially notice the statutes of other states that define offenses substantially similar to the offense defined in this subsection and that therefore can be considered corresponding statutes.

4. This section does not apply to law enforcement officers, court personnel, licensed physicians, licensed psychologists, or attorneys in the performance of their official duties.

2001 Acts, ch 17, §4
 Section amended

CHAPTER 802

LIMITATION OF CRIMINAL ACTIONS

802.2A Incest — sexual exploitation by a counselor or therapist.

1. An information or indictment for incest under section 726.2 committed on or with a person who is under the age of eighteen shall be found within ten years after the person upon whom the offense is committed attains eighteen years of age. An information or indictment for any other incest shall be found within ten years after its commission.

2. An indictment or information for sexual ex-

ploitation by a counselor or therapist under section 709.15 committed on or with a person who is under the age of eighteen shall be found within ten years after the person upon whom the offense is committed attains eighteen years of age. An information or indictment for any other sexual exploitation shall be found within ten years of the date the victim was last treated by the counselor or therapist.

2001 Acts, ch 63, §1
 NEW section

802.3 Felony — aggravated or serious misdemeanor.

In all cases, except those enumerated in sections 802.1, 802.2, and 802.2A, an indictment or information for a felony or aggravated or serious misde-

meanor shall be found within three years after its commission.

2001 Acts, ch 63, §2
Other exceptions, see §802.5, 802.6, 802.9
Section amended

CHAPTER 803

JURISDICTION OF PUBLIC OFFENSES AND PLACE OF TRIAL

803.3 Place of trial — special provisions.

The following special provisions apply:

1. If conduct or results which constitute elements of an offense occur in two or more counties, prosecution of the offense may be had in any of such counties. In such cases, where a dominant number of elements occur in one county, that county shall have the primary right to proceed with prosecution of the offender.

2. If an offense commenced outside the state is consummated within this state, trial of the offense shall be held in the county or counties in which the offense is consummated or the interest protected by the involved penal statute is impaired.

3. If an offense is committed in or upon any conveyance in transit, and it cannot readily be determined in which county the offense was committed, trial of the offense may be held in any county through or over which the conveyance passed in the course of its journey.

4. If an offense is committed on the boundary of two or more counties, and it cannot readily be determined within which county the commission took place, trial of the offense may be held in any of the counties concerned.

5. If the offense is a traffic offense, or a scheduled offense under section 805.8A, 805.8B, or 805.8C, section 805.13 shall apply.

6. *a.* If a person is charged with a violation of the tax laws arising out of individual tax liability, venue is in the county of residence of the person charged with the offense, unless the person is a nonresident of this state or the residence of the person cannot be established, in which event venue is in Polk county.

b. If a person is charged with a violation of the tax laws arising out of a business, venue is in any county where business was conducted. If a specific county cannot be established as a situs, venue is in Polk county.

c. If a person is charged with a violation of section 453B.12, venue is in the county of the residence of the person charged with the offense or the county in which the drugs were found.

d. If a person is charged with a violation of the tax laws in which venue is set under multiple provisions of this section, venue is in any county in which one of the charges may be prosecuted.

2001 Acts, ch 137, §5
Internal reference change applied

CHAPTER 805

CITATIONS IN LIEU OF ARREST

805.1 Issuance of citation — release.

1. Except for an offense for which an accused would not be eligible for bail under section 811.1 or a violation of section 708.11, a peace officer having grounds to make an arrest may issue a citation in lieu of making an arrest without a warrant or, if a warrantless arrest has been made, a citation may be issued in lieu of continued custody.

2. The citation procedure for traffic and other violations designated as scheduled violations is governed by sections 805.6 through 805.15.

3. *a.* State and local law enforcement agencies in the state of Iowa may cooperate to formulate uniform guidelines that will provide for the maximum possible use of citations in lieu of arrest and in lieu of continued custody for offenses for which

citations are authorized. These guidelines shall be submitted to the Iowa law enforcement academy council for review. The Iowa law enforcement academy council shall then submit recommendations to the general assembly no later than January 1, 1984.

b. Factors to be considered by the agencies in formulating the guidelines relating to the issuance of citations for simple misdemeanors not governed by subsection 2, shall include but shall not be limited to all of the following:

(1) Whether a person refuses or fails to produce means for a satisfactory identification.

(2) Whether a person refuses to sign the citation.

(3) Whether detention appears reasonably

necessary in order to halt a continuing offense or disturbance or to prevent harm to a person or persons.

(4) Whether a person appears to be under the influence of intoxicants or drugs and no one is available to take custody of the person and be responsible for the person's safety.

(5) Whether a person has insufficient ties to the jurisdiction to assure that the person will appear or it reasonably appears that there is a substantial likelihood that the person will refuse to appear in response to a citation.

(6) Whether a person has previously failed to appear in response to a citation or after release on pretrial release guidelines.

c. Additional factors to be considered in the formulation of guidelines relating to the issuance of citations for other offenses for which citations are authorized shall include but shall not be limited to all of the following concerning the person:

- (1) Place and length of residence.
- (2) Family relationships.
- (3) References.
- (4) Present and past employment.
- (5) Criminal record.
- (6) Nature and circumstances of the alleged offense.

(7) Other facts relevant to the likelihood of the person's response to a citation.

4. The issuance of a citation in lieu of arrest or in lieu of continued custody does not affect the officer's authority to conduct an otherwise lawful search. The issuance of a citation in lieu of arrest shall be deemed an arrest for the purpose of the speedy indictment requirements of R.Cr.P. 27(2)(a), Ia. Ct. Rules, 3rd ed.

5. Even if a citation is issued, the officer may take the cited person to an appropriate medical facility if it reasonably appears that the person needs care.

6. When a citation is not issued for an offense for which a citation is authorized, the arrested person may be released pending initial appearance on bail or on other conditions determined by pretrial release guidelines. When an arrested person furnishes bail, the officer then in charge of the place of detention shall secure it in safekeeping and shall see that it is forwarded to the office of the clerk of court during the clerk's next regular business day.

7. When the offense is one for which a citation is not authorized, the person does not qualify for release under pretrial release guidelines and the person cannot be released under a bond schedule, the person may be released on bail or otherwise only after initial appearance before a magistrate as provided in chapter 804 and the rules of criminal procedure.

2001 Acts, ch 24, §60
Subsection 4 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 sections 805.8A, 805.8B, and 805.8C 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 sections 805.8A, 805.8B, and 805.8C, 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 an assessment of a minimum fine is applicable and the entry is otherwise not prohibited by this section, an amount equal to one and one-half times the minimum fine plus court costs.

(2) 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.

(3) If the violation charged involved or resulted in an accident or injury to property and the total damages are less than one thousand dollars, the amount of fifty dollars plus court costs.

(4) If the violation is for any offense for which a court appearance is mandatory, and an assessment of a minimum fine is not applicable, 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 and shall not be used for any offense under section 321.218 or 321A.32.

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. The uniform citation and complaint shall contain a place for citing a person in violation of section 453A.2, subsection 2.

4. Supplies of the uniform citation and complaint for municipal corporations and county agencies shall be paid for out of the budget of the municipal corporation 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 branch.

5. The uniform citation and complaint shall contain a place for the verification of the officer issuing the complaint. The complaint may be verified before the chief officer of the law enforcement agency, or the chief officer's designee. The chief officer of each law enforcement agency of the state may designate specific individuals to administer oaths and certify verifications.

6. 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.

7. Supplies of uniform citation and complaint forms existing or on order on July 1, 1995, may be used until exhausted.

2001 Acts, ch 6, §1; 2001 Acts, ch 137, §5
Scheduled fine for purposes of calculating unsecured appearance bond, see §805.8A, subsection 1, paragraph a
Internal reference change applied
Subsection 5 amended

805.8 Scheduled violations.

1. *Application.* Except as otherwise indicated, violations of sections of the Code specified in sections 805.8A, 805.8B, and 805.8C are scheduled violations, and the scheduled fine for each of those violations is as provided in those sections, 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. *Description of violations.* The descriptions of offenses used in sections 805.8A, 805.8B, and 805.8C are for convenience only and shall not be construed to define any offense or to include or ex-

clude 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.

2001 Acts, ch 24, §61; 2001 Acts, ch 137, §1
See Code editor's note to §12.65
Section stricken and rewritten

805.8A Motor vehicle and transportation scheduled violations.

1. Parking 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.

b. For a parking violation under section 321L.2A, subsection 2, the scheduled fine is twenty dollars.

c. For violations under section 321L.2A, subsection 3, sections 321L.3, 321L.4, subsection 2, and section 321L.7, the scheduled fine is one hundred dollars.

2. Title or registration violations.

a. For violations under sections 321.32, 321.34, 321.37, 321.38, and 321.41, the scheduled fine is ten dollars.

b. For violations under sections 321.17, 321.47, 321.55, 321.98, and 321.115, the scheduled fine is thirty dollars.

c. For violations under sections 321.25, 321.45, 321.46, 321.48, 321.52, 321.57, 321.62, 321.67, and 321.104, the scheduled fine is fifty dollars.

d. For a violation under section 321.99, the scheduled fine is one hundred dollars.

3. Equipment violations.

a. For violations under sections 321.317, 321.386, 321.387, 321.388, 321.389, 321.390, 321.392, 321.393, 321.422, 321.432, 321.436, 321.439, 321.440, 321.441, 321.442, and 321.444, the scheduled fine is ten dollars.

b. For improperly used or nonused, or defective or improper equipment, other than brakes, driving lights and brake lights, under section 321.437, the scheduled fine is ten dollars.

c. For violations under sections 321.382,

321.404A, and 321.438, the scheduled fine is fifteen dollars.

d. For violations of sections 321.383, 321.384, 321.385, 321.398, 321.402, 321.403, 321.404, 321.409, 321.415, 321.419, 321.420, 321.421, 321.423, and 321.433, the scheduled fine is twenty dollars.

e. For a violation of section 321.430, the scheduled violation* is thirty-five dollars.

f. For violations under sections 321.234A, 321.247, 321.381, and 321.381A, the scheduled fine is fifty dollars.

4. Driver's license violations.

For violations under sections 321.174A, 321.180, 321.180B, 321.193, and 321.194, the scheduled fine is thirty dollars.

b. For a violation of section 321.216, the scheduled violation* is seventy-five dollars.

c. For violations under sections 321.174, 321.216B, 321.216C, 321.219, and 321.220, the scheduled fine is one hundred dollars.

5. Speed violations.

a. For excessive speed violations in excess of the limit under section 321.236, subsections 5 and 11, sections 321.285, and 461A.36, the scheduled fine shall be the following:

(1) Ten dollars for speed not more than five miles per hour in excess of the limit.

(2) Twenty dollars for speed greater than five but not more than ten miles per hour in excess of the limit.

(3) Thirty dollars for speed greater than ten but not more than fifteen miles per hour in excess of the limit.

(4) Forty dollars for speed greater than fifteen but not more than twenty miles per hour in excess of the limit.

(5) Forty dollars plus two dollars for each mile per hour of excessive speed over twenty miles per hour over the limit.

b. Notwithstanding paragraph "a", for excessive speed violations in speed zones greater than fifty-five miles per hour, the scheduled fine shall be:

(1) Ten dollars for speed not more than five miles per hour in excess of the limit.

(2) Twenty dollars for speed greater than five but not more than ten miles per hour in excess of the limit.

(3) Forty dollars for speed greater than ten but not more than fifteen miles per hour in excess of the limit.

(4) Sixty dollars for speed greater than fifteen but not more than twenty miles per hour in excess of the limit.

(5) Sixty dollars plus two dollars for each mile per hour of excessive speed over twenty miles per hour over the limit.

c. Excessive speed in whatever amount by a school bus is not a scheduled violation under any section listed in this subsection.

d. Excessive speed in conjunction with a viola-

tion of section 321.278 is not a scheduled violation, whatever the amount of excess speed.

e. For a violation under section 321.295, the scheduled fine is thirty dollars.

6. *Operating violations.*

a. For a violation under section 321.236, subsections 3, 4, 9, and 12, the scheduled fine is twenty dollars.

b. For violations under section 321.275, subsections 1 through 7, sections 321.277A, 321.315, 321.316, 321.318, 321.363, and 321.365, the scheduled fine is twenty-five dollars.

c. For violations under sections 321.288, 321.297, 321.299, 321.303, 321.304, subsections 1 and 2, sections 321.305, 321.306, 321.311, 321.312, 321.314, 321.323, 321.340, 321.353, 321.354, and 321.395, the scheduled fine is thirty-five dollars.

d. For violations under sections 321.302 and 321.366, the scheduled fine is fifty dollars.

7. *Failure to yield or obey violations.*

a. For a violation by an operator of a motor vehicle under section 321.257, subsection 2, the scheduled fine is thirty-five dollars.

b. For violations under sections 321.298, 321.307, 321.308, 321.313, 321.319, 321.320, 321.321, 321.327, 321.329, and 321.333, the scheduled fine is thirty-five dollars.

8. *Traffic sign or signal violations.* For violations under section 321.236, subsections 2 and 6, sections 321.256, 321.294, 321.304, subsection 3, and section 321.322, the scheduled fine is thirty-five dollars.

9. *Bicycle or pedestrian violations.* For violations by a pedestrian or a bicyclist under section 321.234, subsections 3 and 4, section 321.236, subsection 10, section 321.257, subsection 2, section 321.275, subsection 8, section 321.325, 321.326, 321.328, 321.331, 321.332, 321.397, or 321.434, the scheduled fine is fifteen dollars.

10. *School bus violations.*

a. For violations by an operator of a school bus under sections 321.285 and 321.372, subsections 1 and 2, the scheduled fine is thirty-five dollars. However, an excessive speed violation by a school bus of more than ten miles per hour in excess of the limit is not a scheduled violation.

b. For a violation under section 321.372, subsection 3, the scheduled violation* is one hundred dollars.

11. *Emergency vehicle violations.*

a. For violations under sections 321.231, 321.367, and 321.368, the scheduled fine is thirty-five dollars.

b. For a violation under section 321.324, the scheduled fine is fifty dollars.

12. *Restrictions on vehicles.*

a. For violations under sections 321.309, 321.310, 321.394, 321.461, and 321.462, the scheduled fine is twenty-five dollars.

b. For height, weight, length, width, load violations, and towed vehicle violations under sec-

tion 321.437, the scheduled fine is twenty-five dollars.

c. For violations under sections 321.454, 321.455, 321.456, 321.457, and 321.458, the scheduled fine is one hundred dollars.

d. For violations under section 321.466, the scheduled fine is twenty dollars for each two thousand pounds or fraction thereof of overweight.

e. 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 through 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 thousand dollars, only by uniform citation and complaint. Violations of the schedule of weight violations, where the fine charged exceeds one thousand dollars shall, when the violation is admitted and section 805.9 applies, be chargeable upon uniform citation and complaint, indictment, or county attorney's information, 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 thousand 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.

f. For a violation under section 321E.16, other than the provisions relating to weight, the scheduled fine is one hundred dollars.

13. *Motor carrier violations.*

a. For violations under sections 321.54, 326.22, and 326.23, the scheduled fine is twenty dollars.

b. For a violation under section 321.449, the scheduled fine is twenty-five dollars.

c. For violations under sections 321.208A, 321.364, 321.450, 321.460, and 452A.52, the scheduled fine is one hundred dollars.

d. For violations of section 325A.3, subsection 5, or section 325A.8, the scheduled fine is fifty dollars.

e. For violations of chapter 325A, other than a violation of section 325A.3, subsection 5, or section 325A.8, the scheduled fine is two hundred fifty dollars.

f. For failure to have proper carrier identification markings under section 327B.1, the scheduled fine is fifty dollars.

g. 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 two

hundred fifty dollars.

14. *Miscellaneous violations.*

a. *Failure to obey a peace officer.* For a violation under section 321.229, the scheduled fine is thirty-five dollars.

b. *Abandoning a motor vehicle.* For a violation under section 321.91, the scheduled fine is one hundred dollars.

c. *Seat belt or restraint violations.* For violations under sections 321.445 and 321.446, the scheduled fine is twenty-five dollars.

d. *Litter and debris violations.* For violations under sections 321.369 and 321.370, the scheduled fine is thirty-five dollars.

e. *Open container violations.* For violations under sections 321.284 and 321.284A, the scheduled fine is one hundred dollars.

f. *Proof of financial responsibility.* If, in connection with a motor vehicle accident, a person is charged and found guilty of a violation of section 321.20B, subsection 1, the scheduled fine is five hundred dollars; otherwise, the scheduled fine for a violation of section 321.20B, subsection 1, is two hundred fifty dollars. Notwithstanding section 805.12, fines collected pursuant to this paragraph shall be submitted to the state court administrator and distributed fifty percent to the victim compensation fund established in section 915.94, twenty-five percent to the county in which such fine is imposed, and twenty-five percent to the general fund of the state.

g. *Radar-jamming devices.* For a violation under section 321.232, the scheduled fine is fifty dollars.

h. *Railroad crossing violations.*

(1) For violations under sections 321.341, 321.342, 321.343, and 321.344, the scheduled fine is one hundred dollars.

(2) For a violation under section 321.344B, the scheduled fine is two hundred dollars.

i. *Road work zone violations.* The scheduled fine for any moving traffic violation under chapter 321, as provided in this section, shall be doubled if the violation occurs within any road work zone, as defined in section 321.1.

2001 Acts, ch 137, §2

*The word "fine" probably intended; corrective legislation is pending
NEW section

805.8B Navigation, recreation, hunting, and fishing scheduled violations.

1. *Navigation violations.*

a. For violations of registration, inspections, identification, and record provisions under sections 462A.5, 462A.35, and 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, sections 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 section 462A.31, subsection 5, 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.

2. *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 section 321G.9, subsections 1, 2, 3, 4, 5, and 7, sections 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.

3. *Hunting and fishing 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.83, 481A.84, 481A.92, 481A.123, 481A.145, subsection 3, sections 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.76, 481A.90, 481A.91, 481A.97, 481A.122, 481A.126, 481A.142, 481A.145, subsection 2, sections 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, 482.9, 482.15, and 483A.42, 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, fur-bearing 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) For other game, the scheduled fine is fifty dollars.
- (5) For fur-bearing 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, fur-bearing 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 fur-bearing 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.

(5) Possession of a prohibited pistol or revolver while hunting deer, the scheduled fine is one hundred 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.144, subsection 4, or section 481A.145, subsections 4, 5, and 6, 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 fur-bearing 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.

4. *Ginseng violations.* For a violation of section 456A.24, subsection 11, the scheduled fine is one hundred dollars.

5. *Eurasian water milfoil violations.* For violations of section 456A.37, subsection 5, the scheduled fine is one hundred dollars.

6. *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.

2001 Acts, ch 137, §3
NEW section

805.8C Miscellaneous scheduled violations.

1. *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.

2. *Alcoholic beverage violations.* For violations of section 123.49, subsection 2, paragraph "h", the scheduled fine for a licensee or permittee is one thousand five hundred dollars, and the scheduled fine for a person who is employed by a licensee or permittee is five hundred dollars.

3. *Smoking violations.*

a. For violations of section 142B.6, 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.

b. For violations of section 453A.2, subsection

1, by an employee of a retailer, the scheduled fine is as follows:

(1) If the violation is a first offense, the scheduled fine is one hundred dollars.

(2) If the violation is a second offense, the scheduled fine is two hundred fifty dollars.

(3) If the violation is a third or subsequent offense, the scheduled fine is five hundred dollars.

c. For violations of section 453A.2, subsection 2, the scheduled fine is as follows 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:

(1) If the violation is a first offense, the scheduled fine is fifty dollars.

(2) If the violation is a second offense, the scheduled fine is one hundred dollars.

(3) If the violation is a third or subsequent offense, the scheduled fine is two hundred fifty dollars.

2001 Acts, ch 137, §4
NEW section

805.11 Other penalties.

If the defendant is convicted of a scheduled violation, the penalty is the scheduled fine, without suspension of the fine prescribed in section 805.8A, 805.8B, or 805.8C together with costs assessed and distributed as prescribed by section 602.8106, unless it appears from the evidence that the violation was of the type set forth in section 805.10, subsection 1, paragraph "a" or "c", in which event the scheduled fine does not apply and the penalty shall be increased within the limits provided by law for the offense.

2001 Acts, ch 137, §5
Internal reference change applied

805.14 Credit cards.

Fines for scheduled traffic violations enumerated in section 805.8A may be paid by credit cards, as defined in section 537.1301, subsection 16, approved for that purpose by the commissioner of public safety. The commissioner shall enter agreements with financial institutions extending credit through the use of credit cards to insure reimbursement of the amount of the fine plus appropriate costs to the proper traffic violations office in the state. The commissioner shall adopt rules pursuant to chapter 17A to implement the provisions of this section.

2001 Acts, ch 137, §5
Internal reference change applied

CHAPTER 901

JUDGMENT AND SENTENCING PROCEDURES

901.5 Pronouncing judgment and sentence.

After receiving and examining all pertinent information, including the presentence investigation report and victim impact statements, if any, the court shall consider the following sentencing options. The court shall determine which of them is authorized by law for the offense, and of the authorized sentences, which of them or which combination of them, in the discretion of the court, will provide maximum opportunity for the rehabilitation of the defendant, and for the protection of the community from further offenses by the defendant and others.

At the time fixed by the court for pronouncement of judgment and sentence, the court shall act accordingly:

1. If authorized by section 907.3, the court may defer judgment and sentence for an indefinite period in accordance with chapter 907.

2. If the defendant is not an habitual offender as defined by section 902.8, the court may pronounce judgment and impose a fine.

3. The court may pronounce judgment and impose a fine or sentence the defendant to confinement, or both, and suspend the execution of the sentence or any part of it as provided in chapter 907.

4. The court may pronounce judgment and impose a fine or sentence the defendant to confinement, or both.

5. If authorized by section 907.3, the court may defer the sentence and assign the defendant to the judicial district department of correctional services.

6. The court may pronounce judgment and sentence the defendant to confinement and then reconsider the sentence as provided by section 902.4 or 903.2.

7. The court shall inform the defendant of the mandatory minimum sentence, if one is applicable.

8. The court may order the defendant to complete any treatment indicated by a substance abuse evaluation ordered pursuant to section 901.4A or any other section.

8A. *a.* The court shall order DNA profiling of a defendant convicted of an offense that requires profiling under section 13.10.

b. Notwithstanding section 13.10, the court may order the defendant to provide a physical specimen to be submitted for DNA profiling if appropriate. In determining the appropriateness of ordering DNA profiling, the court shall consider the deterrent effect of DNA profiling, the likelihood of repeated offenses by the defendant, and the seriousness of the offense.

9. If the defendant is being sentenced for an aggravated misdemeanor or a felony, the court shall publicly announce the following:

a. That the defendant's term of incarceration may be reduced from the maximum sentence because of statutory earned time, work credits, and program credits.

b. That the defendant may be eligible for parole before the sentence is discharged.

c. In the case of multiple sentences, whether the sentences shall be served consecutively or concurrently.

10. In addition to any sentence imposed pursuant to chapter 902 or 903, the court shall order the state department of transportation to revoke the defendant's driver's license or motor vehicle operating privilege for a period of one hundred eighty days, or to delay the issuance of a driver's license for one hundred eighty days after the person is first eligible if the defendant has not been issued a driver's license, and shall send a copy of the order in addition to the notice of conviction required under section 124.412, 126.26, or 453B.16, to the state department of transportation, if the defendant is being sentenced for any of the following offenses:

a. A controlled substance offense under section 124.401, 124.401A, 124.402, or 124.403.

b. A drug or drug-related offense under section 126.3.

c. A controlled substance tax offense under chapter 453B.

If the person's operating privileges are suspended or revoked at the time of sentencing, the order shall provide that the one hundred eighty-day revocation period shall not begin until all other suspensions or revocations have terminated. Any order under this section shall also provide that the department shall not issue a temporary restricted license to the defendant during the revocation period, without further order by the court.

11. In addition to any sentence or other penalty imposed against the defendant for an offense under chapter 124, the court shall consider the provisions of 21 U.S.C. § 862, regarding the denial of federal benefits to drug traffickers and possessors convicted under state or federal law, and may enter an order specifying the range and scope of benefits to be denied to the defendant, according to the provisions of 21 U.S.C. § 862. For the purposes of this subsection, "federal benefit" means the issuance of any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or through the appropriation of funds of the United States, but does not include any retirement, welfare, social securi-

ty, health, disability, veterans, public housing, or similar benefit for which payments or services are required for eligibility. The supreme court may adopt rules establishing sentencing guidelines consistent with this subsection and 21 U.S.C. § 862. The clerk of the district court shall send a copy of any order issued pursuant to this subsection to the denial of federal benefits program of the United States department of justice, along with any other forms and information required by the department.

12. In addition to any sentence or other penalty imposed against the defendant for an offense under chapter 124, the court shall consider the denial of state benefits to the defendant, and may enter an order specifying the range and scope of benefits to be denied to the defendant, comparable to the federal benefits denied under subsection 11. For the purposes of this subsection, “state benefit” means the issuance of any grant, contract, loan, professional license, or commercial license pro-

vided by a state agency, department, program, or otherwise through the appropriation of funds of the state, but does not include any retirement, welfare, health, disability, veterans, public housing, or similar benefit. The supreme court may adopt rules establishing sentencing guidelines consistent with this subsection and comparable to the guidelines for denial of federal benefits in 21 U.S.C. § 862. The clerk of the district court shall send a copy of any order issued pursuant to this subsection to each state agency, department, or program required to deny benefits pursuant to such an order.

13. In addition to any sentence or other penalty imposed against the defendant, the court shall sentence the defendant to an additional indeterminate term of years if required under section 902.3A, subsection 2.

2001 Acts, ch 165, §3
Surcharge on penalty, chapter 911
NEW subsection 13

CHAPTER 901A

SEXUALLY PREDATORY OFFENSES

901A.1 Definitions.

1. As used in this chapter, the term “sexually predatory offense” means any serious or aggravated misdemeanor or felony which constitutes:

- a. A violation of any provision of chapter 709.
- b. Sexual exploitation of a minor in violation of section 728.12, subsection 1.
- c. Enticing a minor away in violation of section 710.10, subsection 1.
- d. Pandering involving a minor in violation of section 725.3, subsection 2.
- e. Any offense involving an attempt to commit an offense contained in this section.

f. An offense under prior law of this state or an offense committed in another jurisdiction which would constitute an equivalent offense under paragraphs “a” through “e”.

2. As used in this chapter, the term “prior conviction” includes a plea of guilty, deferred judgment, deferred or suspended sentence, or adjudication of delinquency, regardless of whether a prior conviction occurred before, on, or after March 31, 2000.

2001 Acts, ch 17, §5
Subsection 1, NEW paragraph c and former paragraphs c – e redesignated as d – f

CHAPTER 901B

INTERMEDIATE CRIMINAL SANCTIONS

901B.1 Corrections continuum — intermediate criminal sanctions program.

1. The corrections continuum consists of the following:

a. LEVEL ONE. Noncommunity-based corrections sanctions including the following:

(1) Self-monitored sanctions. Self-monitored sanctions which are not monitored for compliance including, but not limited to, fines and community service.

(2) Other than self-monitored sanctions. Other than self-monitored sanctions which are monitored for compliance by other than the district de-

partment of correctional services including, but not limited to, mandatory mediation, victim and offender reconciliation, and noncommunity-based corrections supervision.

b. LEVEL TWO. Probation and parole options consisting of the following:

(1) Monitored sanctions. Monitored sanctions are administrative supervision sanctions which are monitored for compliance by the district department of correctional services and include, but are not limited to, low-risk offender-diversion programs.

(2) Supervised sanctions. Supervised sanc-

tions are regular probation or parole supervision and any conditions established in the probation or parole agreement or by court order.

(3) Intensive supervision sanctions. Intensive supervision sanctions provide levels of supervision above sanctions in subparagraph (2) but are less restrictive than sanctions under paragraph "c" and include electronic monitoring, day reporting, day programming, live-out programs for persons on work release or who have violated chapter 321J, and institutional work release under section 904.910.

c. LEVEL THREE. Quasi-incarceration sanctions. Quasi-incarceration sanctions are those supported by residential facility placement or twenty-four hour electronic monitoring including, but not limited to, the following:

- (1) Residential treatment facilities.
- (2) Operating while intoxicated offender treatment facilities.
- (3) Work release facilities.
- (4) House arrest with electronic monitoring.
- (5) A substance abuse treatment facility as established and operated by the Iowa department of public health.

d. LEVEL FOUR. Short-term incarceration designed to be of short duration, including, but not limited to, the following:

- (1) Twenty-one day shock incarceration for persons who violate chapter 321J.
- (2) Jail for less than thirty days.
- (3) Violators' facilities.
- (4) Prison with sentence reconsideration.

e. LEVEL FIVE. Incarceration which consists of the following:

- (1) Prison.
- (2) Jail for thirty days or longer.

2. "Intermediate criminal sanctions program" means a program structured around the corrections continuum in subsection 1, describing sanctions and services available in each level of the continuum in the district and containing the policies of the district department of correctional services regarding placement of a person in a particular level of sanction and the requirements and conditions under which a defendant will be transferred between levels in the corrections continuum under the program.

3. Each judicial district and judicial district department of correctional services shall implement an intermediate criminal sanctions program by July 1, 2001. An intermediate criminal sanctions program shall consist of only levels two,

three, and sublevels one and three of level four of the corrections continuum and shall be operated in accordance with an intermediate criminal sanctions plan adopted by the chief judge of the judicial district and the director of the judicial district department of correctional services. The plan adopted shall be designed to reduce probation revocations to prison through the use of incremental, community-based sanctions for probation violations.

The plan shall be subject to rules adopted by the department of corrections. The rules shall include provisions for transferring individuals between levels in the continuum. The provisions shall include a requirement that the reasons for the transfer be in writing and that an opportunity for the individual to contest the transfer be made available.

A copy of the program and plan shall be filed with the chief judge of the judicial district, the department of corrections, and the division of criminal and juvenile justice planning of the department of human rights by July 1, 2001.

4. a. The district department of correctional services shall place an individual committed to it under section 907.3 to the sanction and level of supervision which is appropriate to the individual based upon a current risk assessment evaluation. Placements may be to levels two and three of the corrections continuum. The district department may, with the approval of the Iowa department of public health and the department of corrections, place an individual in a level three substance abuse treatment facility established pursuant to section 135.130, to assist the individual in complying with a condition of probation. The district department may, with the approval of the department of corrections, place an individual in a level four violator facility established pursuant to section 904.207 only as a penalty for a violation of a condition imposed under this section.

b. The district department may transfer an individual along the intermediate criminal sanctions program operated pursuant to subsection 3 as necessary and appropriate during the period the individual is assigned to the district department. However, nothing in this section shall limit the district department's ability to seek a revocation of the individual's probation pursuant to section 908.11.

2001 Acts, ch 184, §10, 11
 Subsection 1, paragraph c, NEW subparagraph (5)
 Subsection 4, paragraph a amended

CHAPTER 902

FELONIES

902.3A Determinate sentencing and additional term of years for class “D” felons.

1. Notwithstanding section 902.3, when a conviction for a class “D” felony is entered against a person, the court, at its discretion, in imposing a sentence of confinement pursuant to section 901.5, may commit the person into the custody of the director of the Iowa department of corrections for a determinate term of less than the maximum length of the sentence prescribed by section 902.9, subsection 5, if mitigating circumstances exist and those circumstances are stated specifically on the record.

a. The determinate term of confinement shall not be for less than one year and if a mandatory minimum sentence is required by law, the determinate term of confinement imposed under this section shall not be less than the mandatory minimum term of confinement prescribed by law.

b. A person sentenced to a determinate term of confinement under this section shall not be eligible for parole until the person has served one-half of the determinate term of confinement under the sentence.

c. Earned time shall be calculated as provided in chapter 903A. However, earned time accrued and not forfeited shall not apply to cause the person to become eligible for parole until the person has served one-half of the determinate term of confinement.

d. A person on parole or work release under a determinate term of confinement imposed under this section shall be subject to the terms and conditions of parole or work release as set out in chapter 906. Violations of parole or work release shall be subject to the procedures set out in chapters 905 and 908 or rules adopted under those chapters.

e. This section does not apply to an offense classified as a forcible felony, a felony under section 321J.2, felonies in chapters 707, 708, and 709, a person sentenced as a habitual offender, felonies listed in section 901A.1, felonies listed in section 902.12, or a felony committed by a person on parole or work release, or while in the custody of the director of the department of corrections.

2. When the person is sentenced and committed into the custody of the director of the department of corrections pursuant to subsection 1, the person shall also be sentenced to an additional indeterminate term of years not to exceed two years. The sentence of an additional term shall be consecutive to the determinate term of confinement.

a. The sentence of an additional indeterminate term of years shall commence immediately upon the expiration of the determinate term of

confinement and the person shall be assigned to the judicial district department of correctional services by the department of corrections. The district department shall place a person assigned to it under this paragraph in a level of sanction and supervision which is appropriate to the person pursuant to the district’s intermediate criminal sanctions program operated under chapter 901B.

b. The district department may transfer a person along the continuum of the intermediate criminal sanctions program operated pursuant to chapter 901B as necessary and appropriate during the period the person is assigned to the district department. If the person violates the terms and conditions of the placement, the district may transfer the person to a more restrictive placement as provided in the program.

c. A person serving an additional indeterminate term of years may be discharged from that sentence in the same manner as a person serving probation may be discharged under section 907.9. Discharge from an additional indeterminate term of years terminates the person’s sentence of an additional indeterminate term of years.

d. A person serving an additional indeterminate term of years shall receive credit for any time served after discharge from the preceding determinate term of confinement against the person’s sentence of an additional indeterminate term of years.

3. Notwithstanding subsection 2, if a person is paroled at least six months prior to the expiration of the person’s determinate term of confinement, the person shall not serve an additional indeterminate term of years.

4. Section 907.3 governs the inapplicability of deferred judgments and deferred or suspended sentences to sentences imposed under this section.

2001 Acts, ch 165, §4
NEW section

902.4 Reconsideration of felon’s sentence.

For a period of one year from the date when a person convicted of a felony, other than a class “A” felony or a felony for which a minimum sentence of confinement is imposed, begins to serve a sentence of confinement, the court, on its own motion or on the recommendation of the director of the Iowa department of corrections, may order the person to be returned to the court, at which time the court may review its previous action and reaffirm it or substitute for it any sentence permitted by law. Copies of the order to return the person to the court shall be provided to the attor-

ney for the state, the defendant's attorney, and the defendant. Upon a request of the attorney for the state, the defendant's attorney, or the defendant if the defendant has no attorney, the court may, but is not required to, conduct a hearing on the issue of reconsideration of sentence. The court shall not disclose its decision to reconsider or not to reconsider the sentence of confinement until the date reconsideration is ordered or the date the one-year period expires, whichever occurs first. The district court retains jurisdiction for the limited purposes of conducting such review and entering an appropriate order notwithstanding the timely filing of a notice of appeal. The court's final order in the proceeding shall be delivered to the defendant personally or by certified mail. The court's decision to take the action or not to take the action is not subject to appeal. However, for the purposes of appeal, a judgment of conviction of a felony is a final judgment when pronounced.

2001 Acts, ch 165, §5
Section amended

902.9 Maximum sentence for felons.

The maximum sentence for any person convicted of a felony shall be that prescribed by statute or, if not prescribed by statute, if other than a class "A" felony shall be determined as follows:

1. A felon sentenced for a first conviction for a violation of section 124.401D, shall be confined for no more than ninety-nine years.

2. A class "B" felon shall be confined for no more than twenty-five years.

3. An habitual offender shall be confined for no more than fifteen years.

4. A class "C" felon, not an habitual offender, shall be confined for no more than ten years, and in addition shall be sentenced to a fine of at least one thousand dollars but not more than ten thousand dollars.

5. A class "D" felon, not an habitual offender, shall be confined for no more than five years, and in addition shall be sentenced to a fine of at least seven hundred fifty dollars but not more than seven thousand five hundred dollars. A class "D" felon, such felony being for a violation of section 321J.2, may be sentenced to imprisonment for up to one year in the county jail.

The criminal penalty surcharge required by sections 911.2 and 911.3 shall be added to a fine imposed on a class "C" or class "D" felon, as provided by that section, and is not a part of or subject to the maximums set in this section.

2001 Acts, ch 168, §4
Enhanced penalties in weapons free zones, see §724.4A
Habitual offender, §902.8
Surcharge on penalty, chapter 911
Subsection 5, unnumbered paragraph 2 amended

CHAPTER 903

MISDEMEANORS

903.1 Maximum sentence for misdemeanants.

1. If a person eighteen years of age or older is convicted of a simple or serious misdemeanor and a specific penalty is not provided for or if a person under eighteen years of age has been waived to adult court pursuant to section 232.45 on a felony charge and is subsequently convicted of a simple, serious, or aggravated misdemeanor, the court shall determine the sentence, and shall fix the period of confinement or the amount of fine, which fine shall not be suspended by the court, within the following limits:

a. For a simple misdemeanor, there shall be a fine of at least fifty dollars but not to exceed five hundred dollars. The court may order imprisonment not to exceed thirty days in lieu of a fine or in addition to a fine.

b. For a serious misdemeanor, there shall be a fine of at least two hundred fifty dollars but not to exceed one thousand five hundred dollars. In addition, the court may also order imprisonment not to exceed one year.

2. When a person is convicted of an aggravated misdemeanor, and a specific penalty is not provided for, the maximum penalty shall be imprison-

ment not to exceed two years. There shall be a fine of at least five hundred dollars but not to exceed five thousand dollars. When a judgment of conviction of an aggravated misdemeanor is entered against any person and the court imposes a sentence of confinement for a period of more than one year the term shall be an indeterminate term.

3. A person under eighteen years of age convicted of a simple misdemeanor under chapter 321, 321G, 453A, 461A, 461B, 462A, 481A, 481B, 483A, 484A, or 484B, or a violation of a county or municipal curfew or traffic ordinance, except for an offense subject to section 805.8, may be required to pay a fine, not to exceed one hundred dollars, as fixed by the court, or may be required to perform community service as ordered by the court.

4. The criminal penalty surcharge required by sections 911.2 and 911.3 shall be added to a fine imposed on a misdemeanant, and is not a part of or subject to the maximums set in this section.

2001 Acts, ch 168, §5
See also §701.8
Enhanced penalties in weapons free zones, see §724.4A
Surcharge on penalty, chapter 911
Subsection 4 amended

903.4 Providing place of confinement.

All persons sentenced to confinement for a period of one year or less shall be confined in a place to be furnished by the county where the conviction was had unless the person is presently committed to the custody of the director of the Iowa department of corrections, in which case the provisions of section 901.8 apply, or unless the person is serving a determinate term of confinement of one year pursuant to section 902.3A. All persons sentenced to confinement for a period of more than one year

shall be committed to the custody of the director of the Iowa department of corrections to be confined in a place to be designated by the director and the cost of the confinement shall be borne by the state. The director may contract with local governmental units for the use of detention or correctional facilities maintained by the units for the confinement of such persons.

2001 Acts, ch 165, §6
Section amended

CHAPTER 904

DEPARTMENT OF CORRECTIONS

904.108 Director — duties, powers.

1. The director shall:
 - a. Supervise the operations of the institutions under the department's jurisdiction and may delegate the powers and authorities given the director by statute to officers or employees of the department.
 - b. Supervise state agents whose duties relate primarily to the department.
 - c. Establish and maintain a program to oversee women's institutional and community corrections programs and to provide community support to ensure continuity and consistency of programs. The person responsible for implementing this section shall report to the director.
 - d. Establish and maintain acceptable standards of treatment, training, education, and rehabilitation in the various state penal and corrective institutions which shall include habilitative services and treatment for offenders with mental retardation. For the purposes of this paragraph, "*habilitative services and treatment*" means medical, mental health, social, educational, counseling, and other services which will assist a person with mental retardation to become self-reliant. However, the director may also provide rehabilitative treatment and services to other persons who require the services. The director shall identify all individuals entering the correctional system who are persons with mental retardation, as defined in section 222.2, subsection 4. Identification shall be made by a qualified professional in the area of mental retardation. In assigning an offender with mental retardation, or an offender with an inadequately developed intelligence or with impaired mental abilities, to a correctional facility, the director shall consider both the program needs and the security needs of the offender. The director shall consult with the department of human services in providing habilitative services and treatment to offenders with mental illness or mental retardation. The director may enter into agreements with the department of human services to

utilize mental health institutions and share staff and resources for purposes of providing habilitative services and treatment, as well as providing other special needs programming. Any agreement to utilize mental health institutions and to share staff and resources shall provide that the costs of the habilitative services and treatment shall be paid from state funds. Not later than twenty days prior to entering into any agreement to utilize mental health institution staff and resources, other than the use of a building or facility, for purposes of providing habilitative services and treatment, as well as other special needs programming, the directors of the departments of corrections and human services shall each notify the chairpersons and ranking members of the joint appropriations subcommittees that last handled the appropriation for their respective departments of the pending agreement. Use of a building or facility shall require approval of the general assembly if the general assembly is in session or, if the general assembly is not in session, the legislative council may grant temporary authority, which shall be subject to final approval of the general assembly during the next succeeding legislative session.

e. Employ, assign, and reassign personnel as necessary for the performance of duties and responsibilities assigned to the department. Employees shall be selected on the basis of fitness for work to be performed with due regard to training and experience and are subject to chapter 19A.

f. Establish standards of mental fitness which shall govern the initial recruitment, selection, and appointment of correctional officers. To promote these standards, the director shall by rule require a battery of psychological tests to determine cognitive skills, personality characteristics and suitability of all applicants for a correctional career.

g. Examine all state institutions which are penal, reformatory, or corrective to determine their efficiency for adequate care, custody, and training of their inmates and report the findings to the board.

h. Prepare a budget for the department, subject to the approval of the board, and other reports as required by law.

i. Develop long-range correctional planning and an ongoing five-year corrections master plan. The director shall annually report to the general assembly to inform its members as to the status and content of the planning and master plan.

j. Supervise rehabilitation camps within the state as may be established by the director. Persons committed to institutions under the department may be transferred to the facilities of the camp system and upon transfer shall be subject to the same laws as pertain to the transferring institution.

k. Adopt rules subject to the approval of the board, pertaining to the internal management of institutions and agencies under the director's charge and necessary to carry out the duties and powers outlined in this section.

l. Adopt rules, policies, and procedures, subject to the approval of the board, pertaining to the supervision of parole and work release.

m. Provide routine administrative and support services to the board of parole.

n. Cooperate with Iowa state university of science and technology to provide, for purposes of agricultural research, development, and testing, the use of resources, including property, facilities, labor, and services, connected with institutions listed in section 904.102. However, use of the resources by the university is subject to approval by the director. Before granting approval, the director shall require that the university compensate the department for the use of the resources, on terms specified by the director.

o. Establish and maintain a correctional training center at the Mount Pleasant correctional facility.

2. The director, with the express approval of the board, may establish for any inmate sentenced pursuant to section 902.3 a furlough program under which inmates sentenced to and confined in any institution under the jurisdiction of the department may be temporarily released. A furlough for a period not to exceed fourteen days may be granted when an immediate member of an inmate's family is seriously ill or has died, when an inmate is to be interviewed by a prospective employer, or when an inmate is authorized to participate in a training program not available within the institution. Furloughs for a period not to exceed fourteen days may also be granted in order to allow inmates to participate in programs or activities that serve rehabilitative objectives.

3. The director may establish a sales bonus system for the sales representatives for prison industry products. If a sales bonus system is established, the system shall not affect the status of the sales representatives under chapter 19A.

4. The director may expend moneys from the support allocation of the department as reim-

bursement for replacement or repair of personal items of the department's employees damaged or destroyed by clients of the department during the employee's tour of duty. However, the reimbursement shall not exceed one hundred fifty dollars for each item. The director shall establish rules in accordance with chapter 17A to carry out the purpose of this subsection.

5. The director may obtain assistance for the department for construction, facility planning, and project accomplishment with the department of general services and by contracting under chapter 28E for data processing with the department of human services or the department of general services.

6. The director may charge an inmate a correctional fee for custodial expenses incurred or which may be incurred while the inmate is in the custody of the department. The custodial expenses may include, but are not limited to, board and room, medical and dental fees, education costs, clothing costs, and the costs of supervision, services, and treatment to the inmate. The correctional fee shall not exceed the actual cost of keeping the inmate in custody. The correctional fees collected pursuant to this subsection shall be credited as a reimbursement to the appropriate correctional institution. This subsection does not limit the right of the director to obtain any other remedy authorized by law.

Section not amended; internal reference change applied

904.202 Intake and classification center.

The director may provide facilities and personnel for a diagnostic intake and classification center. The work of the center shall include a scientific study of each inmate, the inmate's career and life history, the causes of the inmate's criminal acts and recommendations for the inmate's custody, care, training, employment, and counseling with a view to rehabilitation and to the protection of society. To facilitate the work of the center and to aid in the rehabilitation of the inmates, the trial judge, prosecuting attorney, and presentence investigators shall furnish the director with any previously authorized presentence investigation report and a full statement of facts and circumstances attending the commission of the offense so far as known or believed by them. If the department develops and utilizes an inmate classification system, it must, within a reasonable time, present evidence from independent experts as to the effectiveness and validity of the classification system.

2001 Acts, ch 131, §4
Section amended

904.303A Training — fund.

A training fund is established under the control of the department. The director shall provide training to all new officers or employees of the department free of charge. The department shall also offer in-service training which shall include

classes for officers and employees in the areas of safety, first aid, emergency preparedness, and any other appropriate class determined by the director. Employees of a judicial district may also attend any in-service training offered by the department. The department may recover from the correctional institution or judicial district the actual costs of planning and conducting the training classes if an employee of the institution or judicial district attends an in-service training class. The costs that may be recovered by the department include the costs of course development, training materials, equipment and facility rental, instruction, and administration. Moneys received as reimbursement of the costs shall be deposited in the training fund for use in conducting future training classes. All cost reimbursement moneys, grants, or appropriations related to training shall be deposited in the fund. Notwithstanding section 8.33, moneys remaining in the training fund at the end of a fiscal year shall not revert to the general fund of the state. Notwithstanding section 12C.7, interest and earnings deposited in the training fund shall be credited to the training fund.

2001 Acts, ch 131, §5
NEW section

904.310 Canteens.

The director may maintain a canteen at an institution under the director's jurisdiction for the sale to persons confined in the institution of items such as toilet articles, candy, tobacco products, notions, and other sundries, and may provide the necessary facilities, equipment, personnel, and merchandise for the canteen. The director shall specify the items to be sold in the canteen. The department may establish and maintain a permanent operating fund for each canteen. The fund shall consist of the receipts from the sale of commodities at the canteen and donations designated by inmates for reimbursement of victims' travel expenses. Any money in the fund over the amount needed to do normal business transactions, to reimburse any accounts which have subsidized the canteen fund, and to reimburse victims' travel expenses shall be considered profit. This money may remain in the canteen fund and be used for any purchase which the superintendent approves that will directly and collectively benefit the inmates of the institution or to reimburse victims' travel expenses.

2001 Acts, ch 131, §6
Section amended

904.405 Recording of testimony.

The director shall cause the testimony taken at the investigation to be recorded. The recording of the testimony shall not be transcribed unless the testimony is part of a case that is appealed or an interested party requests a transcript and pays the cost of preparing the transcript. The recording of the testimony, or the transcription thereof, shall

be filed and maintained in the director's office at the seat of government for at least five years from the date the testimony is taken or the date of a final decision in a case involving the testimony, whichever is later. However, a recording of testimony involving any employee of the department shall continue to be filed and maintained until the employee no longer is employed by the department.

2001 Acts, ch 131, §7
Section amended

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, treatment or education 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 in-

mate'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.

Reports concerning progress made in implementing hard labor requirements; 98 Acts, ch 1222, §5; 99 Acts, ch 202, §5; 2000 Acts, ch 1229, §5; 2001 Acts, ch 186, §7

Section not amended; footnote revised

CHAPTER 905

COMMUNITY-BASED CORRECTIONAL PROGRAM

905.4 Duties of the board.

The district board shall:

1. Adopt bylaws and rules for the conduct of its own business and for the government of the district department's community-based correctional program.

2. Employ a director having the qualifications required by section 905.6 to head the district department's community-based correctional program and, within a range established by the Iowa department of corrections, fix the compensation of and have control over the director and the district department's staff. For purposes of collective bargaining under chapter 20, employees of the district board who are not exempt from chapter 20 are employees of the state, and the employees of all of the district boards shall be included within one collective bargaining unit.

3. Designate one of the counties in the judicial district to serve as the district department's administrative agent to provide, in that capacity, all accounting, personnel, facilities management and supportive services needed by the district department, on terms mutually agreeable in regard to advancement of funds to the county for the added expense it incurs as a result of being so designated. However, the district board may designate the district department itself as the district department's administrative agent, if the district board determines that it would be more efficient and less costly than designating a county as the administrative agent.

4. File with the board of supervisors of each county in the district and with the Iowa department of corrections, within ninety days after the close of each fiscal year, a report covering the district board's proceedings and a statement of receipts and expenditures during the preceding fiscal year.

5. Arrange for, by contract or on such alternative basis as may be mutually acceptable, and equip suitable quarters at one or more sites in the district as may be necessary for the district department's community-based correctional program, provided that the board shall to the greatest extent feasible utilize existing facilities and shall

keep capital expenditures for acquisition, renovation and repair of facilities to a minimum. The district board shall not enter into lease-purchase agreements for the purposes of constructing, renovating, expanding, or otherwise improving a community-based correctional facility or office unless express authorization has been granted by the general assembly, and current funding is adequate to meet the lease-purchase obligation.

6. Have authority to accept property by gift, devise, bequest or otherwise and to sell or exchange any property so accepted and apply the proceeds thereof, or the property received in exchange therefor, to the purposes enumerated in subsection 5.

7. Recruit, promote, accept and use local financial support for the district department's community-based correctional program from private sources such as community service funds, business, industrial and private foundations, voluntary agencies and other lawful sources.

8. Accept and expend state and federal funds available directly to the district department for all or any part of the cost of its community-based correctional program.

9. Arrange, by contract or on an alternative basis mutually acceptable, and with approval of the director of the Iowa department of corrections or that director's designee for utilization of existing local treatment and service resources, including but not limited to employment, job training, general, special, or remedial education; psychiatric and marriage counseling; and alcohol and drug abuse treatment and counseling. It is the intent of this chapter that a district board shall approve the development and maintenance of such resources by its own staff only if the resources are otherwise unavailable to the district department within reasonable proximity to the community where these services are needed in connection with the community-based correctional program.

10. Establish a project advisory committee to act in an advisory capacity on matters pertaining to the planning, operation, and other pertinent functions of each project in the judicial district.

11. Have authority to establish a force of re-

serve peace officers, either separately or collectively through a chapter 28E agreement, as provided in chapter 80D.

2001 Acts, ch 104, §7
NEW subsection 11

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, including reserve peace officers, if a force of reserve peace officers has been established.

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 cre-

ated 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.

2001 Acts, ch 104, §8
Subsection 3 amended

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 or to a violation of chapter 709 committed by a person who is a mandatory reporter of child abuse under section 232.69 in which the victim is a person who is under the age of eighteen.

1. With the consent of the defendant, the court may defer judgment and may place the defendant on probation upon conditions as it may require. Upon a showing that the defendant is not cooperating 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 and the payment of

fees imposed and not waived by the judicial district department of correctional services under section 905.14, 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 the person has been convicted of a violation of that section or the person's driver's license has been revoked under chapter 321J, and any of the following apply:

(1) If the defendant's alcohol concentration established by the results of an analysis of a specimen of the defendant's blood, breath, or urine withdrawn in accordance with chapter 321J exceeds .15, regardless of whether or not the alcohol concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the test equals an alcohol concentration of .15 or more.

(2) If the defendant has previously been convicted of a violation of section 321J.2, subsection 1, or a violation of a statute in another state substantially corresponding to section 321J.2, subsection 1.

(3) If the defendant has previously received a deferred judgment or sentence for a violation of section 321J.2, subsection 1, or for a violation of a statute in another state substantially corresponding to section 321J.2, subsection 1.

(4) If the defendant refused to consent to testing requested in accordance with section 321J.6.

(5) If the offense under chapter 321J results in bodily injury to a person other than the defendant.

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.

j. The offense is a violation of section 707.6A, subsection 1; or a violation of section 707.6A, subsection 4, involving operation of a motor vehicle while intoxicated.

k. The offense is a violation of section 124.401, subsection 1, paragraph "a" or "b", and the controlled substance is methamphetamine.

l. The offense is a violation of section 462A.14, and a mandatory minimum sentence must be served or mandatory minimum fine must be paid by the defendant.

m. The offense is for a determinate term of confinement or an additional indeterminate term of years as provided in section 902.3A.

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. The court may assign the defendant to supervision or services under section 901B.1 at the level of sanctions which the district department determines to be appropriate. However, the court shall not defer the sentence for a violation of any of the following:

a. 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.

b. Section 236.8 or for contempt pursuant to section 236.8 or 236.14.

c. Section 321J.2, subsection 1, if any of the following apply:

(1) If the defendant's alcohol concentration established by the results of an analysis of a specimen of the defendant's blood, breath, or urine withdrawn in accordance with chapter 321J exceeds .15, regardless of whether or not the alcohol concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the test equals an alcohol concentration of .15 or more.

(2) If the defendant has previously been convicted of a violation of section 321J.2, subsection 1, or a violation of a statute in another state substantially corresponding to section 321J.2, subsection 1.

(3) If the defendant has previously received a deferred judgment or sentence for a violation of section 321J.2, subsection 1, or for a violation of a statute in another state substantially corresponding to section 321J.2, subsection 1.

(4) If the defendant refused to consent to testing requested in accordance with section 321J.6.

(5) If the offense under chapter 321J results in bodily injury to a person other than the defendant.

d. Section 707.6A, subsection 1; or section 707.6A, subsection 4, involving operation of a motor vehicle while intoxicated.

e. The offense is a violation of section 124.401, subsection 1, paragraph "a" or "b", and the controlled substance is methamphetamine.

f. The offense is a violation of section 462A.14, and a mandatory minimum sentence must be served or mandatory minimum fine must be paid by the defendant.

g. The offense is for a determinate term of confinement or an additional indeterminate term of years as provided in section 902.3A.

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 to be followed by a term of probation as specified in section 907.7, or commitment of the defendant to the judicial district department of correctional services for supervision or services under section 901B.1 at the level of sanctions which the district department determines to be appropriate and the payment of fees imposed under section 905.14. A person so committed who has probation revoked shall be given credit for such time served. However, the court shall not suspend any of the following sentences:

a. The minimum term of two days imposed pursuant to section 708.2A, subsection 6, paragraph “*a*”, or a sentence imposed under section 708.2A, subsection 6, paragraph “*b*”.

b. A sentence imposed pursuant to section 236.8 or 236.14 for contempt.

c. A mandatory minimum sentence of incarceration imposed pursuant to a violation of section 321J.2, subsection 1; furthermore, the court shall not suspend any part of a sentence not involving incarceration imposed pursuant to section 321J.2, subsection 2, beyond the mandatory minimum if any of the following apply:

(1) If the defendant’s alcohol concentration established by the results of an analysis of a specimen of the defendant’s blood, breath, or urine withdrawn in accordance with chapter 321J exceeds .15, regardless of whether or not the alcohol concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the test equals an alcohol concentration of .15 or more.

(2) If the defendant has previously been convicted of a violation of section 321J.2, subsection 1, or a violation of a statute in another state substantially corresponding to section 321J.2, subsection 1.

(3) If the defendant has previously received a deferred judgment or sentence for a violation of section 321J.2, subsection 1, or for a violation of a statute in another state substantially corresponding to section 321J.2, subsection 1.

(4) If the defendant refused to consent to testing requested in accordance with section 321J.6.

(5) If the offense under chapter 321J results in bodily injury to a person other than the defendant.

d. A sentence imposed pursuant to section 707.6A, subsection 1; or section 707.6A, subsection 4, involving operation of a motor vehicle while intoxicated.

e. The offense is a violation of section 124.401, subsection 1, paragraph “*a*” or “*b*”, and the controlled substance is methamphetamine.

f. A mandatory minimum sentence or fine imposed for a violation of section 462A.14.

g. The sentence for a determinate term of confinement or an additional indeterminate term of years as provided in section 902.3A.

2001 Acts, ch 165, §7 – 9
Subsection 1, NEW paragraph m
Subsection 2, NEW paragraph g
Subsection 3, NEW paragraph g

907.8A Sixth judicial district — determination of issues during probationary period.

1. Except as otherwise provided, the probation violation sanctioning jurisdiction of the court in the sixth judicial district shall be transferred to an administrative parole and probation judge upon entry of the sentencing order for each person who is sentenced to the custody of the director of the department of corrections and whose sentence is suspended. The court shall retain jurisdiction to establish the amount of restitution, approve the plan of restitution, and for reconsideration of the original sentence. The court shall also retain jurisdiction for arrest warrants, initial appearances, preliminary probation violation informations, bond proceedings, violations of restitution plans, and appointment of counsel. If a person is not sentenced to the custody of the director of the department of corrections the court shall retain the jurisdiction over matters relating to those cases.

2. All issues relating to whether the probationer has violated or fulfilled the terms and conditions of probation, including but not limited to express violations of a specific term of probation, new violations of the law, and changes of the term of probation as provided in sections 907.7, 908.11, and 910.4, which would otherwise be determined by the court, shall be determined instead by an administrative parole and probation judge. The administrative parole and probation judge, who shall be an attorney, shall be appointed by the board of parole, notwithstanding chapter 17A. The costs of employing the administrative parole and probation judge shall be borne by the board of parole.

A probation hearing conducted by an administrative parole and probation judge shall be conducted in the same manner as hearings regarding revocations or modifications of or discharge from parole. The hearing may be conducted electronically. The probation officer shall notify the county attorney at least five days prior to any probation hearing. The interests of the state shall be represented by the probation officer at the probation hearing, unless the county attorney or the county attorney’s designee elects to assist the probation officer. The board of parole, the department of corrections, and the clerk of the district court in

the sixth judicial district shall devise and implement a system for the filing of documents and records of probation hearings conducted under this section. The system shall allow for the electronic filing of records and documents where electronic filing is practicable.

3. Appeals from orders of the administrative parole and probation judge which pertain to the

revocations or modifications of or discharge from probation shall be conducted in the manner provided in rules adopted by the board of parole.

For future repeal of this section, effective July 1, 2002, see 98 Acts, ch 1197, §10, 13; 2000 Acts, ch 1177, §4, 5

Appropriation of funds for continuation of pilot program; 98 Acts, ch 1222, §17; 99 Acts, ch 202, §18; 2000 Acts, ch 1214, §57, 58; 2000 Acts, ch 1229, §13; 2001 Acts, ch 186, §11

Section not amended; footnote revised

CHAPTER 907A

INTERSTATE PROBATION AND PAROLE COMPACT

Chapter to be repealed effective on the later of July 1, 2002, or upon enactment of the interstate compact for adult offender supervision by thirty-five states; 2001 Acts, ch 15, §8; 2001 Acts, 2nd Ex, ch 6, §25, 26, 37

CHAPTER 907B

INTERSTATE COMPACT FOR ADULT OFFENDER SUPERVISION

For future amendments enacting this chapter effective on the later of July 1, 2002, or upon enactment of the interstate compact by no less than thirty-five states, see 2001 Acts, ch 15; 2001 Acts, 2nd Ex, ch 6, §25, 26, 37

CHAPTER 909

FINES

909.8 Payment and collection provisions apply to surcharge.

The provisions of this chapter governing the payment and collection of a fine, except section 909.3A, also apply to the payment and collection of

surcharges imposed pursuant to chapter 911. However, section 909.10 shall not apply to surcharges assessed under section 911.3.

2001 Acts, ch 168, §6
Section amended

CHAPTER 910

RESTITUTION

910.7 Petition for hearing.

1. At any time during the period of probation, parole, or incarceration, the offender or the office or individual who prepared the offender's restitution plan may petition the court on any matter related to the plan of restitution or restitution plan of payment and the court shall grant a hearing if on the face of the petition it appears that a hearing is warranted.

2. After a petition has been filed, the court, at any time prior to the expiration of the offender's sentence, provided the required notice has been given pursuant to subsection 3, may modify the

plan of restitution or the restitution plan of payment, or both, and may extend the period of time for the completion of restitution.

3. If a petition related to a plan of restitution has been filed, the offender, the county attorney, the department of corrections if the offender is currently confined in a correctional institution, the office or individual who prepared the offender's restitution plan, and the victim shall receive notice prior to any hearing under this section.

2001 Acts, ch 133, §1
Section amended

CHAPTER 911

SURCHARGE ADDED TO CRIMINAL PENALTIES

911.2 Surcharge.

When a court imposes a fine or forfeiture for a violation of a state law, or of a city or county ordinance except an ordinance regulating the parking of motor vehicles, the court shall assess an additional penalty in the form of a surcharge equal to thirty percent of the fine or forfeiture imposed. An additional drug abuse resistance education surcharge of ten dollars shall be assessed by the clerk of the district court if the violation arose out of a violation of an offense provided for in chapter 321J or chapter 124, division IV. In the event of multiple offenses, the surcharge shall be based upon the total amount of fines or forfeitures imposed for all offenses. When a fine or forfeiture is suspended in whole or in part, the surcharge shall be reduced in proportion to the amount suspended.

The surcharge is subject to the provisions of chapter 909 governing the payment and collection of fines, as provided in section 909.8.

2001 Acts, ch 182, §11
Section amended

911.3 Law enforcement initiative surcharge.

1. In addition to the surcharge assessed in section 911.2, a law enforcement initiative surcharge of one hundred twenty-five dollars shall be assessed by the clerk of the district court if an adjudication of guilt or a deferred judgment has been entered for a criminal violation under any of the following:

a. Chapter 124, 155A, 453B, 713, 714, 715A, or 716.

b. Section 719.8, 725.1, 725.2, or 725.3.

2. The surcharge shall be deposited in the general fund of the state.

3. The surcharge is subject to the provisions of chapter 909 governing the payment and collection of fines, as provided in section 909.8.

2001 Acts, ch 168, §7
NEW section

CHAPTER 915

VICTIM RIGHTS

915.94 Victim compensation fund.

A victim compensation fund is established as a separate fund in the state treasury. Moneys deposited in the fund shall be administered by the department and dedicated to and used for the purposes of section 915.41 and this subchapter. In addition, the department may use moneys from the fund for the purpose of the department's prosecutor-based victim service coordination, including the duties defined in sections 910.3 and 910.6 and this chapter, and for the award of funds to pro-

grams that provide services and support to victims of domestic abuse or sexual assault as provided in chapter 236. The department may also use up to one hundred thousand dollars from the fund to provide training for victim service providers. 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.

2001 Acts, ch 84, §1
Section amended

IOWA CODE SUPPLEMENT

2001

ADDENDUM

ADDENDUM

CHAPTER 2

GENERAL ASSEMBLY

2.12 Expenses of general assembly and legislative agencies — budgets.

There is appropriated out of any funds in the state treasury not otherwise appropriated a sum sufficient to pay for legislative printing and all current and miscellaneous expenses of the general assembly, authorized by either the senate or the house, and the director of revenue and finance shall issue warrants for such items of expense upon requisition of the president, majority leader, and secretary of the senate or the speaker and chief clerk of the house.

There is appropriated out of any funds in the state treasury not otherwise appropriated, such sums as are necessary, for each house of the general assembly for the payment of any unpaid expense of the general assembly incurred during or in the interim between sessions of the general assembly, including but not limited to salaries and necessary travel and actual expenses of members, expenses of standing and interim committees or subcommittees, and per diem or expenses for members of the general assembly who serve on statutory boards, commissions, or councils for which per diem or expenses are authorized by law. The director of revenue and finance shall issue warrants for such items of expense upon requisition of the president, majority leader, and secretary of the senate for senate expense or the speaker and chief clerk of the house for house expense.

There is appropriated out of any funds in the state treasury not otherwise appropriated, such sums as are necessary for the renovation, remodeling, or preparation of the legislative chambers, legislative offices, or other areas or facilities used or to be used by the legislative branch of government, and for the purchase of legislative equip-

ment and supplies deemed necessary to properly carry out the functions of the general assembly. The director of revenue and finance shall issue warrants for such items of expense, whether incurred during or between sessions of the general assembly, upon requisition of the president, majority leader, and secretary of the senate for senate expense or the speaker and chief clerk of the house for house expense.

There is appropriated out of any funds in the state treasury not otherwise appropriated such sums as may be necessary for the fiscal year budgets of the legislative service bureau, the legislative fiscal bureau, the citizens' aide office and the computer support bureau for salaries, support, maintenance, and miscellaneous purposes to carry out their statutory responsibilities. The legislative service bureau, the legislative fiscal bureau, the citizens' aide office and the computer support bureau shall submit their proposed budgets to the legislative council not later than September 1 of each year. The legislative council shall review and approve the proposed budgets not later than December 1 of each year. The budget approved by the legislative council for each of its statutory legislative agencies shall be transmitted by the legislative council to the department of management on or before December 1 of each year for the fiscal year beginning July 1 of the following year. The department of management shall submit the approved budgets received from the legislative council to the governor for inclusion in the governor's proposed budget for the succeeding fiscal year. The approved budgets shall also be submitted to the chairpersons of the committees on appropriations. The committees on appropriations may allocate from the funds appropriated by

this section the funds contained in the approved budgets, or such other amounts as specified, pursuant to a concurrent resolution to be approved by both houses of the general assembly. The director of revenue and finance shall issue warrants for salaries, support, maintenance, and miscellaneous purposes upon requisition by the administrative head of each statutory legislative agency. If the legislative council elects to change the approved budget for a legislative agency prior to July 1, the legislative council shall transmit the amount of the budget revision to the department of management prior to July 1 of the fiscal year; however, if the general assembly approved the budget it cannot be changed except pursuant to a concurrent resolution approved by the general assembly.

Sick leave and vacation incentive and other early termination programs; reports to general assembly; 2001 Acts, 2nd Ex, ch 5, §3, 4, 8

Section not amended; footnote added

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 annual status reports for all ongoing capital projects of state agencies, pursuant to section 18.12, subsection 14.

d. 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.

2001 Acts, 2nd Ex, ch 2, §1, 13

2001 amendment takes effect November 16, 2001, and first applies to the budget and appropriations made for the fiscal year beginning July 1, 2002, and ending June 30, 2003; 2001 Acts, 2nd Ex, ch 2, §13

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

CHAPTER 8

DEPARTMENT OF MANAGEMENT — BUDGET AND FINANCIAL CONTROL ACT

8.5 General powers and duties.

The director of the department of management shall have the power and authority to:

1. *Assistants.* Employ, with the approval of the governor, two assistants and such clerical assistants as the director may find necessary.

2. *Compensation of employees.* Fix the compensation, with the approval of the governor, of any person employed by the director, provided that the total amount paid in salaries shall not exceed the appropriation made for that purpose.

3. *Discharge of employees.* Discharge any employee of the department of management.

4. *Miscellaneous duties.* Exercise and per-

form such other powers and duties as may be prescribed by law.

Consultation with department of personnel on initiatives for state government productivity; 2001 Acts, 2nd Ex, ch 5, §6, 8

Section not amended; footnote added

8.6 Specific powers and duties.

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

1. *Forms.* To consult with all state officers and agencies which receive reports and forms from county officers, in order to devise standardized reports and forms which will permit computer processing of the information submitted by county officers, and to prescribe forms on which each mu-

nicipality, at the time of preparing estimates required under section 24.3, shall be required to compile in parallel columns the following data and estimates for immediate availability to any taxpayer upon request:

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

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

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

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

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

3. Budget document. To prepare the budget document and draft the legislation to make it ef-

fective.

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

5. Reserved.

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

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

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

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

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

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

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

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

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

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

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

h. Estimates in detail of the appropriations

necessary to meet the requirements of the several departments and institutions for the next fiscal year.

i. Statements showing:

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

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

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

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

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

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

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

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

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

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

13. *Capital project budgeting requests.* To compile annually all capital project budgeting requests of all state agencies, as defined in section 8.3A, and to consolidate the requests, with individual state agency priorities noted, into a report for submission with the budget documents by the governor pursuant to section 8.22. Any additional information regarding the capital project budgeting requests or priorities shall be compiled and submitted in the same report.

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

2001 Acts, 2nd Ex, ch 2, §2, 3, 13

2001 amendments take effect November 16, 2001, and first apply to the budget and appropriations made for the fiscal year beginning July 1, 2002, and ending June 30, 2003; 2001 Acts, 2nd Ex, ch 2, §13

Subsection 14 stricken and former subsection 15 amended and renumbered as 14

8.21 Budget transmitted.

Not later than February 1 of each legislative session, the governor shall transmit to the legislature a document to be known as a budget, setting forth the governor's financial program for the ensuing fiscal year and having the character and scope set forth in sections 8.22 through 8.29.

If the governor is required to use a lesser amount in the budget process because of a later meeting of the state revenue estimating conference under section 8.22A, subsection 3, the governor shall transmit recommendations for a budget in conformance with that requirement within fourteen days of the later meeting of the state revenue estimating conference.

2001 Acts, 2nd Ex, ch 2, §4, 13

2001 amendment takes effect November 16, 2001, and first applies to the budget and appropriations made for the fiscal year beginning July 1, 2002, and ending June 30, 2003; 2001 Acts, 2nd Ex, ch 2, §13

Unnumbered paragraph 2 amended

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 estimates which shall be used by the governor in preparation of the budget message under section 8.22 and the general assembly in the budget process for the succeeding fiscal year:

a. 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.

b. The amount of revenue for the following fiscal year from gambling revenues and from interest earned on the cash reserve fund and the economic emergency fund to be deposited in the rebuild Iowa infrastructure fund under section 8.57, subsection 5, paragraph “e”.

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

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

2001 Acts, 2nd Ex, ch 2, §5, 13
2001 amendment takes effect November 16, 2001, and first applies to the budget and appropriations made for the fiscal year beginning July 1, 2002, and ending June 30, 2003; 2001 Acts, 2nd Ex, ch 2, §13
Subsection 5 amended

8.25 Tentative budget.

Upon the receipt of the estimates of expenditure requirements called for by section 8.23 and not later than the following December 1, the director of the department of management shall cause to be prepared a tentative budget conforming as to scope, contents, and character to the requirements of section 8.22 and containing the estimates of expenditures as called for by section 8.23, which tentative budget shall be transmitted to the governor.

2001 Acts, 2nd Ex, ch 2, §6, 13
2001 amendments are effective November 16, 2001; 2001 Acts, 2nd Ex, ch 2, §13
Section amended

8.29 Regents universities — uniform accounting system.

The state board of regents, with the approval of the director of the department of management, shall establish a uniform budgeting and accounting system for the institutions of higher education under its control, and shall require each of the institutions of higher education to begin operating under the uniform system not later than June 30, 1994.

2001 Acts, 2nd Ex, ch 2, §7, 13
2001 amendments take effect November 16, 2001, and first apply to the budget and appropriations made for the fiscal year beginning July 1, 2002, and ending June 30, 2003; 2001 Acts, 2nd Ex, ch 2, §13
Unnumbered paragraphs 1 – 3 stricken

8.35A See page 5.

8.53 GAAP deficit — GAAP implementation.

For the fiscal year beginning July 1, 1996, and each succeeding fiscal year, the governor shall recommend in the governor’s budget and the general assembly shall provide funds to eliminate the GAAP deficit of the general fund of the state, as reported in the state’s comprehensive annual financial report issued during the prior fiscal year, either through the appropriation of specific funds to correct a GAAP adjustment or by setting funds aside in a special account in an amount equal to the GAAP deficit.

2001 Acts, 2nd Ex, ch 2, §9, 13
2001 amendment is effective November 16, 2001; 2001 Acts, 2nd Ex, ch 2, §13
Unnumbered paragraph 1 stricken

8.54 General fund expenditure limitation.

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

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

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

2. There is created a state general fund expenditure limitation for each fiscal year beginning on or after July 1, 1993, calculated as provided in this section.

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

4. The state general fund expenditure limitation amount provided for in this section shall be used by the governor in the preparation of the budget under section 8.22 and approval of the budget and by the general assembly in the budget process.

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

5. For fiscal years in which section 8.55, subsection 2, results in moneys being transferred to the general fund, the original state general fund expenditure limitation amount provided for in subsection 3 shall be readjusted to include the moneys which are so transferred.

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

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

2001 Acts, 2nd Ex, ch 2, §10, 11, 13

2001 amendments take effect November 16, 2001, and first apply to the budget and appropriations made for the fiscal year beginning July 1, 2002, and ending June 30, 2003; 2001 Acts, 2nd Ex, ch 2, §13

Subsection 4 amended

Subsections 7 and 8 stricken and rewritten as subsection 7

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 credited to the 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.

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

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

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

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

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

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

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

d. If an appropriation is made pursuant to

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

e. Except as provided in section 8.58, the Iowa economic emergency fund shall be considered a special account for the purposes of section 8.53 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.

2001 Acts, 2nd Ex, ch 6, §27, 28, 37
2001 amendments to subsections 1 and 3 are effective November 15, 2001; 2001 Acts, 2nd Ex, ch 6, §37
Subsections 1 and 3 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 ac-

count 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.

For future amendments to this section effective July 1, 2002, see 2001 Acts, 2nd Ex, ch 6, §29 – 31

Section not amended; footnote added

CHAPTER 19A

DEPARTMENT OF PERSONNEL

Sick leave and vacation incentive and other early termination programs; productivity initiatives; reports to governor and general assembly; 2001 Acts, 2nd Ex, ch 5, §3, 4, 6, 8

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 evaluation resulting from the application for employment.

Release of Iowa public employees’ retirement system records for purposes of administering and monitoring an early termination program; confidentiality maintained by records recipients; 2001 Acts, 2nd Ex, ch 5, §4, 8

Section not amended; footnote added

CHAPTER 29A

MILITARY CODE

Eviction or distress for rent during military service;
 termination of leases; 2001 Acts, 2nd Ex, ch 1,
 §29, 30, 33, 35, 36

Court action required for termination of installment
 contracts during military service;
 2001 Acts, 2nd Ex, ch 1, §29, 31, 35, 36

Court action or parties agreement required for disposition of
 property under obligation secured by mortgage, trust deed,
 or other security during military service;
 2001 Acts, 2nd Ex, ch 1, §29, 32, 35, 36

Maximum rate of interest during military service on
 obligations incurred prior to service;
 2001 Acts, 2nd Ex, ch 1, §29, 34 – 36

29A.1 Definitions.

The following words, terms, and phrases when used in this chapter shall have the respective meanings herein set forth:

1. “*Active state service*” means training or operational duty or other service authorized and performed under the provisions of 32 U.S.C. or other federal law or regulation as part of the Iowa army national guard or Iowa air national guard and paid for with federal funds.

2. “*Facility*” means the land, and the buildings and other improvements on the land which are the responsibility and property of the Iowa national guard.

3. “*Federal service*” means duty authorized and performed under the provisions of 10 U.S.C. as part of the active military forces of the United States or the army national guard of the United States or the air national guard of the United States.

4. “*Homeland defense*” means the protection of state territory, population, and critical infrastructure and assets against attacks from within or without the state.

5. “*Law and regulations*” means and includes state and federal law and regulations.

6. “*Militia*” shall mean the forces provided for in the Constitution of Iowa.

7. “*National guard*” means the Iowa units, detachments and organizations of the army national guard of the United States, the air national guard of the United States, the army national guard, and the air national guard as those forces are defined in 10 U.S.C. § 101.

8. “*Officer*” shall mean and include commissioned officers and warrant officers.

9. “*On duty*” means training, including unit training assemblies, and other training, operational duty, and other service which may be required under state or federal law, regulations, or orders, and the necessary travel of an officer or enlisted person to the place of performance and return home after performance of that duty, but does not include federal service.

10. “*Organization*” means a command composed of two or more subordinate units and in-

cludes the state headquarters for both the army and the air national guard, one or more divisions, wings, brigades, groups, battalions, squadrons or flights as defined by an appropriate table of organization, a table of distribution or unit personnel document.

11. “*State active duty*” means duty authorized and performed under section 29A.8 or 29A.9 and paid for with state funds. “*State active duty*” also includes serving as the adjutant general, a deputy adjutant general, or the state quartermaster.

12. “*Unit*” means a military element of an organization whose structure is prescribed by competent authority such as a table of organization, table of distribution, or unit personnel document. For the purposes of this chapter, a unit shall include one or more companies, flights, troops, batteries or detachments and the state officer candidate school.

13. Except when otherwise expressly defined herein military words, terms and phrases shall have the meaning commonly ascribed to them in the military profession.

2001 Acts, 2nd Ex, ch 1, §1 – 6, 28
 2001 amendments take effect November 14, 2001, and apply retroactively to and after September 11, 2001; 2001 Acts, 2nd Ex, ch 1, §28
 Subsection 1 stricken and rewritten
 Subsection 3 amended
 Subsection 4 stricken and rewritten
 Subsections 7 and 9 amended
 NEW subsection 11 and former subsections 11 and 12 renumbered as 12 and 13

29A.4 Organization — armament — equipment and discipline.

The organization, armament, equipment and discipline of the national guard, and the militia when called into state active duty, except as hereinafter specifically provided, shall be the same as that which is now or may be hereafter prescribed under the provisions of federal law and regulations as to those requirements which are mandatory therein, but as to those things which are optional therein they shall become effective when an order or regulation to that effect shall have been promulgated by the governor.

2001 Acts, 2nd Ex, ch 1, §7, 28
 2001 amendments take effect November 14, 2001, and apply retroactively to and after September 11, 2001; 2001 Acts, 2nd Ex, ch 1, §28
 Section amended

29A.6 Military forces of state.

The military forces of the state of Iowa shall consist of the army national guard, the air national guard, and the militia.

2001 Acts, 2nd Ex, ch 1, §§, 28
2001 amendments take effect November 14, 2001, and apply retroactively to and after September 11, 2001; 2001 Acts, 2nd Ex, ch 1, §28
Section amended

29A.7 Commander in chief.

The governor is the commander in chief of the military forces, except when they are in federal service. The governor may employ the military forces of the state for the defense or relief of the state, the enforcement of its laws, the protection of life and property, emergencies resulting from disasters or public disorders as defined in section 29C.2, including homeland security and defense duties, and parades and ceremonies of a civic nature.

2001 Acts, 2nd Ex, ch 1, §9, 28
2001 amendments take effect November 14, 2001, and apply retroactively to and after September 11, 2001; 2001 Acts, 2nd Ex, ch 1, §28
Section amended

29A.8 State active duty.

1. The governor may order into state active duty the military forces of the state, including retired members of the national guard, both army and air, as the governor deems proper, under command of an officer as the governor may designate under one or more of the following circumstances:

- a. In case of insurrection or invasion, or imminent danger of insurrection or invasion.
- b. For the purpose of aiding the civil authorities of any political subdivision of the state in maintaining law and order in the subdivision in cases of breaches of the peace or imminent danger of breaches of the peace, if the law enforcement officers of the subdivision are unable to maintain law and order, and the civil authorities request the assistance.
- c. For the purposes of performing homeland defense or homeland security duties.

2. If circumstances necessitate the establishment of a military district under martial law and the general assembly is not convened, the military district shall be established only after the governor has issued a proclamation convening an extraordinary session of the general assembly.

2001 Acts, 2nd Ex, ch 1, §10, 28
2001 amendments take effect November 14, 2001, and apply retroactively to and after September 11, 2001; 2001 Acts, 2nd Ex, ch 1, §28
Section stricken and rewritten

29A.8A Active state service.

If federal funding and authorization exist for this purpose, the governor may order to active state service the military forces of the Iowa army national guard or Iowa air national guard as the governor may deem appropriate for the purposes of homeland security, homeland defense, or other duty.

2001 Acts, 2nd Ex, ch 1, §11, 28
Section takes effect November 14, 2001, and applies retroactively to and after September 11, 2001; 2001 Acts, 2nd Ex, ch 1, §28
NEW section

29A.9 Training.

The governor may order the national guard into training for any period. The governor may order the organizations or personnel of the national guard or persons who have retired from the national guard to state active duty for purposes of security, drill, instruction, parade, ceremonies of a civic nature, guard, recruiting and escort duty, and schools of instruction as a student or instructor, including the Iowa military academy, and prescribe all regulations and requirements for those duties.

The governor shall also provide for the participation of the national guard, or any part of it, in training at such times and places as necessary to insure readiness for public defense or federal service.

A state employee shall take either a full day's leave or eight hours of compensatory time on any day in which the state employee receives a full day's pay from federal sources for national guard duty.

A member of the national guard shall be considered to be on duty when called to testify about an incident which the member observed or was involved in while that member was on duty.

2001 Acts, 2nd Ex, ch 1, §12, 28
2001 amendments take effect November 14, 2001, and apply retroactively to and after September 11, 2001; 2001 Acts, 2nd Ex, ch 1, §28
Unnumbered paragraph 1 amended

29A.10 Inspections.

The governor may order such inspections of the different organizations, units, and personnel of the national guard as the governor may deem proper and necessary.

The form and mode of inspection shall be prescribed by the adjutant general.

The governor may appoint an officer of the national guard to serve as special investigator for a period determined by the governor. Service as special investigator shall be state active duty. The special investigator shall report to and serve at the pleasure of the governor. The duty of special investigator shall be assigned as additional duty. The special investigator shall not be the person designated as inspector general pursuant to federal national guard bureau regulation.

2001 Acts, 2nd Ex, ch 1, §13, 28
2001 amendments take effect November 14, 2001, and apply retroactively to and after September 11, 2001; 2001 Acts, 2nd Ex, ch 1, §28
Unnumbered paragraph 3 amended

29A.11 Adjutant general — appointment and term.

There shall be an adjutant general of the state who shall be appointed and commissioned by the governor subject to confirmation by the senate and who shall serve at the pleasure of the governor. The rank of the adjutant general shall be at least that of brigadier general and the adjutant general shall hold office for a term of four years beginning and ending as provided in section 69.19. At the

time of appointment the adjutant general shall be a federally recognized commissioned officer in the United States army or air force, the army or air national guard, the army or air national guard of the United States, or the United States army or air force reserve who has reached at least the grade of colonel and who is or is eligible to be federally recognized at the next higher rank.

2001 Acts, 2nd Ex, ch 1, §14, 28
2001 amendments take effect November 14, 2001, and apply retroactively to and after September 11, 2001; 2001 Acts, 2nd Ex, ch 1, §28
Section amended

29A.27 Pay and allowances — injury or death benefit boards — judicial review — damages.

Officers and enlisted persons while in state active duty shall receive the same pay, per diem, and allowances as are paid for the same rank or grade for federal service. However, a person shall not be paid at a base rate of pay of less than one hundred dollars per calendar day of state active duty.

In the event any officer or enlisted person shall be killed while on duty or in state active duty, in line of duty, or shall die as the result of injuries received or as a result of illness or disease contracted while on duty or in state active duty, in line of duty, dependents, as defined by the workers' compensation law of the state, shall receive the maximum compensation provided by such law.

Any officer or enlisted person who suffers injuries or contracts a disease causing disability, in line of duty, while on duty or in state active duty, shall receive hospitalization and medical treatment, and during the period that the officer or enlisted person is totally disabled from returning to military duty the officer or enlisted person shall also receive the pay and allowances of the officer's or enlisted person's grade. In the event of partial disability, the officer or enlisted person shall be allowed partial pay and allowances as determined by an evaluation board of three officers to be appointed by the adjutant general. At least one member of the board shall be a medical officer.

Any claim for death, illness, or disease contracted in line of duty while on duty or in state active duty, shall be filed with the adjutant general within six months from the date of death or contraction of the illness or disease.

Where the provisions of this section may be applicable or at other times as considered necessary, but at least once a year, the adjutant general shall appoint a state review board consisting of three officers, one of whom shall be a medical officer, for the purpose of determining the continuation of benefits for individuals who have established their eligibility under this section. Once established, benefits shall be paid until terminated by the review board and shall continue for the duration of the disability even though the individual may no longer be medically qualified for military service and may have been discharged from the

national guard.

Judicial review of any decision of the evaluation or state review board may be sought in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of the Iowa administrative procedure Act, petitions for judicial review must be filed within a period of thirty days from date of mailing by the adjutant general by certified mail of notice of the board's decision. Within thirty days after the filing of a petition for judicial review, the adjutant general shall make, certify, and file in the office of the clerk of the district court in which the judicial review is sought a full and complete transcript of all documents in the proceeding. The transcript shall include any depositions and a transcript or certification of the evidence, if reported. The attorney general of Iowa, upon the request of the adjutant general, shall represent the board appointed by the adjutant general against whom any such appeal has been instituted.

The provisions herein provided shall apply to all individuals receiving benefits under this section or who subsequently may become entitled to such benefits.

All payments herein provided for shall be paid on the approval of the adjutant general from the contingent fund of the executive council.

In the event benefits for death, injuries or illness are paid in part by the federal government, the state shall pay only the balance necessary to constitute the above designated amounts.

No payment received by any officer or enlisted person under the provisions of this section shall bar the right of such officer or enlisted person, or their heirs or representatives, to recover damages from any partnership, corporation, firm or persons whomsoever who otherwise would be liable, nor shall any such sums received under the provisions of this section reduce the amount of damages recoverable by such officer, enlisted person, or their heirs or representatives, against any partnership, corporation, firm or persons whomsoever who otherwise would be liable.

2001 Acts, 2nd Ex, ch 1, §15, 28
Workers' compensation, see chapter 85
2001 amendments take effect November 14, 2001, and apply retroactively to and after September 11, 2001; 2001 Acts, 2nd Ex, ch 1, §28
Unnumbered paragraphs 1 – 4 amended

29A.28 Leave of absence of civil employees.

All officers and employees of the state, or a subdivision thereof, or a municipality other than employees employed temporarily for six months or less, who are members of the national guard, organized reserves or any component part of the military, naval, or air forces or nurse corps of this state or nation, or who are or may be otherwise inducted into the military service of this state or of the United States, shall, when ordered by proper authority to state active duty, active state service or federal service, be entitled to a leave of absence

from such civil employment for the period of state active duty, active state service, or federal service, without loss of status or efficiency rating, and without loss of pay during the first thirty days of such leave of absence. The proper appointing authority may make a temporary appointment to fill any vacancy created by such leave of absence.

2001 Acts, 2nd Ex, ch 1, §16, 28

See also §29A.43

2001 amendments take effect November 14, 2001, and apply retroactively to and after September 11, 2001; 2001 Acts, 2nd Ex, ch 1, §28

Section amended

29A.29 Payment from treasury — exception.

When in state active duty, the compensation of officers and enlisted persons and expenses of the national guard and claims for death, injury, and illness of the members thereof, incurred in line of duty, shall be paid out of any funds in the state treasury not otherwise appropriated. However, if funds for compensation and expenses have been appropriated for compensation and expenses of persons on full-time state active duty pursuant to a specific Act of the general assembly, such persons shall be paid from funds appropriated pursuant to such Act.

2001 Acts, 2nd Ex, ch 1, §17, 28

2001 amendments take effect November 14, 2001, and apply retroactively to and after September 11, 2001; 2001 Acts, 2nd Ex, ch 1, §28

Section amended

29A.43 Discrimination prohibited — leave of absence.

A person shall not discriminate against any officer or enlisted person of the national guard or organized reserves of the armed forces of the United States because of that membership. An employer, or agent of an employer, shall not discharge a person from employment because of being an officer

or enlisted person of the military forces of the state, or hinder or prevent the officer or enlisted person from performing any military service the person is called upon to perform by proper authority. A member of the national guard or organized reserves of the armed forces of the United States ordered to temporary duty, as defined in section 29A.1, for any purpose is entitled to a leave of absence during the period of the duty or service, from the member's private employment, other than employment of a temporary nature, and upon completion of the duty or service the employer shall restore the person to the position held prior to the leave of absence, or employ the person in a similar position. However, the person shall give evidence to the employer of satisfactory completion of the training or duty, and that the person is still qualified to perform the duties of the position. The period of absence shall be construed as an absence with leave, and shall in no way affect the employee's rights to vacation, sick leave, bonus, or other employment benefits relating to the employee's particular employment. A person violating a provision of this section is guilty of a simple misdemeanor.

2001 Acts, 2nd Ex, ch 1, §18, 28

Leave for civil employees; §29A.28

2001 amendments take effect November 14, 2001, and apply retroactively to and after September 11, 2001; 2001 Acts, 2nd Ex, ch 1, §28

Section amended

29A.71 Pay and allowances.

Officers and enlisted personnel of the Iowa state guard while in state active duty shall receive the same pay, allowances, and compensation as provided by law for members of the Iowa national guard.

2001 Acts, 2nd Ex, ch 1, §19, 28

2001 amendments take effect November 14, 2001, and apply retroactively to and after September 11, 2001; 2001 Acts, 2nd Ex, ch 1, §28

Section amended

CHAPTER 29C

EMERGENCY MANAGEMENT

29C.2 Definitions.

1. "*Disaster*" means man-made and natural occurrences, such as fire, flood, drought, earthquake, tornado, windstorm, hazardous substance or nuclear power plant accident or incident, which threaten the public peace, health, and safety of the people or which damage and destroy public or private property. The term includes attack, sabotage, or other hostile action from within or without the state.

2. "*Homeland security*" means the detection, prevention, preemption, deterrence of, and protection from attacks targeted at state territory, population, and infrastructure.

3. "*Local emergency management agency*"

means a countywide joint county-municipal public agency organized to administer this chapter under the authority of the local emergency management commission.

4. "*Public disorder*" means such substantial interference with the public peace as to constitute a significant threat to the health and safety of the people or a significant threat to public or private property. The term includes insurrection, rioting, looting, and persistent violent civil disobedience.

2001 Acts, 2nd Ex, ch 1, §20, 21, 28

2001 amendments take effect November 14, 2001, and apply retroactively to and after September 11, 2001; 2001 Acts, 2nd Ex, ch 1, §28

Subsection 1 amended

NEW subsection 2 and former subsections 2 and 3 renumbered as 3 and

29C.5 Emergency management division.

An emergency management division is created within the department of public defense. The emergency management division shall be responsible for the administration of emergency planning matters, including emergency resource planning in this state, cooperation with and support of the civil air patrol, homeland security activities, and coordination of available services in the event of a disaster.

2001 Acts, 2nd Ex, ch 1, §22, 28
2001 amendments take effect November 14, 2001, and apply retroactively to and after September 11, 2001; 2001 Acts, 2nd Ex, ch 1, §28
Section amended

29C.8 Powers and duties of administrator.

1. The emergency management division shall be under the management of an administrator appointed by the governor.

2. The administrator shall be vested with the authority to administer emergency management and homeland security affairs in this state and shall be responsible for preparing and executing the emergency management and homeland security programs of this state subject to the direction of the adjutant general.

3. The administrator, upon the direction of the governor and supervisory control of the director of the department of public defense, shall:

a. Prepare a comprehensive plan and emergency management program for homeland security, disaster preparedness, response, recovery, mitigation, emergency operation, and emergency resource management of this state. The plan and program shall be integrated into and coordinated with the homeland security and emergency plans of the federal government and of other states to the fullest possible extent and coordinate the preparation of plans and programs for emergency management of the political subdivisions and various state departments of this state. The plans shall be integrated into and coordinated with a comprehensive state homeland security and emergency program for this state as coordinated by the administrator of the emergency management division to the fullest possible extent.

b. Make such studies and surveys of the indus-

tries, resources, and facilities in this state as may be necessary to ascertain the vulnerabilities of critical state infrastructure and assets to attack and the capabilities of the state for disaster recovery, disaster planning and operations, and emergency resource management, and to plan for the most efficient emergency use thereof.

c. Provide technical assistance to any local emergency commission or joint commission requiring the assistance in the development of an emergency management or homeland security program.

d. Implement planning and training for emergency response teams as mandated by the federal government under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 9601 et seq.

4. The administrator, with the approval of the governor and upon recommendation of the adjutant general, may employ a deputy administrator and such technical, clerical, stenographic, and other personnel and make such expenditures within the appropriation or from other funds made available to the department of public defense for purposes of emergency management, as may be necessary to administer this chapter.

5. The emergency management division may charge fees for the repair, calibration, or maintenance of radiological detection equipment and may expend funds in addition to funds budgeted for the servicing of the radiological detection equipment. The division shall adopt rules pursuant to chapter 17A providing for the establishment and collection of fees for radiological detection equipment repair, calibration, or maintenance services and for entering into agreements with other public and private entities to provide the services. Fees collected for repair, calibration, or maintenance services shall be treated as repayment receipts as defined in section 8.2 and shall be used for the operation of the division's radiological maintenance facility or radiation incident response training.

2001 Acts, 2nd Ex, ch 1, §23, 24, 28
2001 amendments take effect November 14, 2001, and apply retroactively to and after September 11, 2001; 2001 Acts, 2nd Ex, ch 1, §28
Subsection 2 amended
Subsection 3, paragraphs a – c amended

CHAPTER 70A**FINANCIAL AND OTHER PROVISIONS FOR PUBLIC OFFICERS AND EMPLOYEES****70A.23 Credit for accrued sick leave.**

When a state employee, excluding an employee covered under a collective bargaining agreement

which provides otherwise, retires under a retirement system in the state maintained in whole or in part by public contributions or payments, the

number of accrued days of active and banked sick leave of the employee shall be credited to the employee. When an employee retires, is eligible, and has applied for benefits under a retirement system authorized under chapter 97A or 97B, including the teachers insurance annuity association (TIAA) and the college retirement equity fund (CREF), or an employee dies on or after July 1, 1984, while the employee is in active employment but is eligible for retirement benefits under one of the listed chapters, the employee shall receive a cash payment for the employee's accumulated, unused sick leave in both the active and banked sick leave accounts, except when, in lieu of cash payment, payment is made for monthly premiums for health or life insurance or both as provided in a collective bargaining agreement negotiated under chapter 20. An employee of the department of public safety or the department of natural resources who has earned benefits of payment of premiums

under a collective bargaining agreement and who becomes a manager or supervisor and is no longer covered by the agreement shall not lose the benefits of payment of premium earned while covered by the agreement. The payment shall be calculated by multiplying the number of hours of accumulated, unused sick leave by the employee's hourly rate of pay at the time of retirement. However, the total cash payments for accumulated, unused sick leave shall not exceed two thousand dollars per employee and are payable upon retirement or death. Banked sick leave is defined as accrued sick leave in excess of ninety days.

Sick leave and vacation incentive and other early termination programs; reports to general assembly; 2nd Ex, ch 5, §3, 4, 8
Section not amended; footnote added

70A.38 Reserved.

For future text of this section effective July 1, 2002, see 2001 Acts, 2nd Ex, ch 5, §1, 8

CHAPTER 97B

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM (IPERS)

For provisions affecting administration of the system by new division effective July 1, 2002, and applicability of existing rules, see 2001 Acts, ch 68
Transition benefits advisory committee; report; 2001 Acts, ch 68, §20, 24

97B.17 Records maintained.

The department shall establish and maintain records of each member, including but not limited to, the amount of wages of each member, the contribution of each member with interest, and interest dividends credited. The records may be maintained in paper, magnetic, or electronic form, including optical disk storage. These records are the basis for the compilation of the retirement benefits provided under this chapter. The following records maintained under this chapter are not public records for the purposes of chapter 22:

1. Records containing social security numbers.
2. Records specifying amounts accumulated in members' accounts and supplemental accounts.
3. Records containing names or addresses of members or their beneficiaries.
4. Records containing amounts of payments to members or their beneficiaries.
5. Records containing financial or commercial information that relates to the investment of system funds if the disclosure of such information could result in a loss to the system or to the provider of the information.

Summary information concerning the demographics of the members and general statistical

information concerning the system is subject to chapter 22, as well as aggregate information by category.

However, the department's records are evidence for the purpose of proceedings before the department or any court of the amounts of wages and the periods in which they were paid, and the absence of an entry as to a member's wages in the records for any period is evidence that wages were not paid that member in the period.

Notwithstanding any provisions of chapter 22 to the contrary, the department's records may be released to any political subdivision, instrumentality, or other agency of the state solely for use in a civil or criminal law enforcement activity pursuant to the requirements of this paragraph. To obtain the records, the political subdivision, instrumentality, or agency shall, in writing, certify that the activity is authorized by law, provide a written description of the information desired, and describe the law enforcement activity for which the information is sought. The department shall not be civilly or criminally liable for the release or rerelease of records in accordance with this paragraph.

Release of Iowa public employees' retirement system records for purposes of administering and monitoring an early termination program; confidentiality maintained by records recipients; 2001 Acts, 2nd Ex, ch 5, §4, 8
Section not amended; footnote added

CHAPTER 135

DEPARTMENT OF PUBLIC HEALTH

135.11 See page 190.

CHAPTER 217

DEPARTMENT OF HUMAN SERVICES

217.42 Service areas — offices.

1. The organizational structure to deliver the department's field services shall be based upon service areas. The service areas shall serve as a basis for providing field services to persons residing in the counties comprising the service area. The service areas shall be those designated by the department effective January 1, 2002. In determining the service areas, the department shall consider other geographic service areas including but not limited to judicial districts and community empowerment areas. The department shall consult with the county boards of supervisors in a service area with respect to the selection of the service area manager responsible for the service area who is initially selected for the service area designated effective January 1, 2002, and any service area manager selected for the service area thereafter. Following establishment of the service areas effective January 1, 2002, if a county seeks to change the boundaries of a service area, the change shall only take place if the change is mutually agreeable to the department and all affected counties. If it is necessary for the department to significantly modify its field operations or the composition of a designated service area, or if it is necessary for the department to change the number of offices operating less than full-time, the department shall consult with the affected counties prior to implementing such action.

2. The department shall maintain an office in each county. Based on the annual appropriations for field operations, the department shall strive to maintain a full-time presence in each county. If it is not possible to maintain a full-time presence in each county, the department shall provide staff based on its caseload system to assure the provision of services. The department shall consult with the county boards of supervisors of those counties regarding staffing prior to any modification of office hours.

3. A county or group of counties may voluntarily enter into a chapter 28E agreement with the department to provide funding or staff persons to deliver field services in county offices. The agreement shall cover the full fiscal year but may be revised by mutual consent.

2001 Acts, 2nd Ex, ch 4, §1, 9
2001 amendments are effective November 16, 2001; 2001 Acts, 2nd Ex, ch 4, §9
Section amended

217.43 Service area advisory boards — location of county offices.

1. The department shall establish a service area advisory board in each service area. Each of the county boards of supervisors of the counties comprising the service area shall appoint two service area advisory board members. The following requirements apply to the appointments made by a county board of supervisors: the membership shall be appointed in accordance with section 69.16, relating to political affiliation, and section 69.16A, relating to gender balance; not more than one of the members shall be a member of the board of supervisors; and appointments shall be made on the basis of interest in maintaining and improving service delivery. Appointments shall be made a part of the regular proceedings of the board of supervisors and shall be filed with the county auditor and the service area manager. A vacancy on the board shall be filled in the same manner as the original appointment. The boards of supervisors shall develop and agree to other organizational provisions involving the advisory board, including reporting requirements.

2. The purpose of the advisory boards is to improve communication and coordination between the department and the counties and to advise the department regarding maintenance and improvement of service delivery in the counties and communities comprising the service areas.

3. The department shall determine the community in which each county office will be located. The county board of supervisors shall determine the location of the office space for the county office. The county board of supervisors shall make reasonable efforts to collocate the office with other state and local government or private entity offices in order to maintain the offices in a cost-effective location that is convenient to the public.

2001 Acts, 2nd Ex, ch 4, §2, 9
Emergency relief duties of service area advisory board, see §251.5
2001 amendment is effective November 16, 2001; 2001 Acts, 2nd Ex, ch 4, §9
Section stricken and rewritten

217.44 Service areas — employee and volunteer record checks.

1. The department shall conduct criminal and child and dependent adult abuse record checks of persons who are potential employees, employees, potential volunteers, and volunteers in service

area offices in a position having direct contact with the department's clients. The record checks shall be performed in this state and the department may conduct these checks in other states. If the department determines that a 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 the person's employment or participation as a volunteer. The record checks and evaluation shall be performed in accordance with procedures adopted for this purpose by the department.

2. In an evaluation, the department shall consider the nature and seriousness of the crime or founded child or dependent adult 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.

3. The department may permit a person who is evaluated to be employed or to participate as a volunteer if the person complies with the department's conditions relating to employment or participation as a volunteer which may include completion of additional training.

4. If the department determines that the person has committed a crime or has a record of founded child or dependent adult abuse which warrants prohibition of employment or participation as a volunteer, the person shall not be employed by or participate as a volunteer in a department service area office in a position having direct contact with the department's clients.

2001 Acts, 2nd Ex, ch 4, §3, 9
2001 amendments are effective November 16, 2001; 2001 Acts, 2nd Ex, ch 4, §9
Subsections 1 and 4 amended

CHAPTER 226

STATE MENTAL HEALTH INSTITUTES

226.1 Official designation.

1. The state hospitals for persons with mental illness shall be designated as follows:

- a. Mental Health Institute, Mount Pleasant, Iowa.
- b. Mental Health Institute, Independence, Iowa.
- c. Mental Health Institute, Clarinda, Iowa.
- d. Mental Health Institute, Cherokee, Iowa.

2. The purpose of the mental health institutes is to operate as regional resource centers providing one or more of the following:

- a. Treatment, training, care, habilitation, and support of persons with mental illness or a substance abuse problem.
- b. Facilities, services, and other support to the communities located in the region being served by a mental health institute so as to maximize the usefulness of the mental health institutes while minimizing overall costs.

c. A unit for the civil commitment of sexually violent predators committed to the custody of the director of human services pursuant to chapter 229A.

In addition, the mental health institutes are encouraged to act as a training resource for community-based program staff, medical students, and other participants in professional education programs.

3. A mental health institute may request the approval of the council on human services to change the name of the institution for use in communication with the public, in signage, and in other forms of communication.

2001 Acts, 2nd Ex, ch 6, §33, 37
Department of human services may collocate the unit for civil commitment of sexually violent predators at mental health institute at Mount Pleasant; 2001 Acts, 2nd Ex, ch 6, §35, 37
2001 amendment adding subsection 2, paragraph c, is effective November 15, 2001; 2001 Acts, 2nd Ex, ch 6, §37
Subsection 2, NEW paragraph c

CHAPTER 249I

HOSPITAL TRUST FUND

Emergency rulemaking authority; 2001 Acts, 2nd Ex, ch 3, §6, 7

249I.1 Title.

This chapter shall be known and may be cited as the "*Iowa Hospital Trust Fund*".

2001 Acts, 2nd Ex, ch 3, §1, 7
Section is effective November 16, 2001; 2001 Acts, 2nd Ex, ch 3, §7
NEW section

249I.2 Legislative findings — goal.

1. The general assembly finds that:
 - a. The preservation, improvement, and coordination of the health care infrastructure of Iowa is critical to the health and safety of Iowans.

b. Iowa hospital providers are a vital and critical component of Iowa's health care and economic infrastructure.

c. An increasing number of Iowans are eligible for and enrolled in Iowa's medical assistance program.

2. The goal of the trust fund is to provide a continuing source of funding to ensure the state's ability to support the labor force, infrastructure, technology needs, and other elements of the hospital system.

2001 Acts, 2nd Ex, ch 3, §2, 7
Section is effective November 16, 2001; 2001 Acts, 2nd Ex, ch 3, §7
NEW section

249I.3 Definitions.

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

1. "Department" means the department of human services.

2. "Director" means the director of human services.

3. "Hospital" means hospital as defined in section 135B.1.

4. "Hospital trust fund" means the fund created in this chapter to secure funds based on hospital inpatient and outpatient prospective payment methodologies under the medical assistance program.

5. "Public hospital" means a hospital licensed pursuant to chapter 135B and governed pursuant to chapter 145A, 347, 347A, or 392.

2001 Acts, 2nd Ex, ch 3, §3, 7
Section is effective November 16, 2001; 2001 Acts, 2nd Ex, ch 3, §7
NEW section

249I.4 Hospital trust fund — created — appropriations.

1. A hospital trust fund is created in the state treasury under the authority of the department of

human services. Moneys received through agreements for the trust fund and moneys received from sources, including grants, contributions, and participant payments, shall be deposited in the trust fund.

2. Moneys deposited in the trust fund shall be used only as provided in appropriations from the trust fund to the department for the purposes specified in the appropriation.

3. The trust fund shall be separate from the general fund of the state and shall not be considered part of the general fund of the state. The moneys in the trust fund shall not be considered revenue of the state, but rather shall be funds of the trust fund. The moneys in the trust fund are not subject to section 8.33 and shall not be transferred, used, obligated, appropriated, or otherwise encumbered, except to provide for the purposes of this chapter. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the trust fund shall be credited to the trust fund.

4. The department shall adopt rules pursuant to chapter 17A to administer the trust fund and to establish procedures for participation by public hospitals.

5. The treasurer of state shall provide a quarterly report of trust fund activities and balances to the director.

2001 Acts, 2nd Ex, ch 3, §4, 7, 8
Section is effective November 16, 2001, and applies retroactively to October 1, 2001; 2001 Acts, 2nd Ex, ch 3, §7, 8
NEW section

249I.5 State plan amendment.

The director shall amend the state medical assistance plan as necessary to implement this chapter.

2001 Acts, 2nd Ex, ch 3, §5, 7
Section is effective November 16, 2001; 2001 Acts, 2nd Ex, ch 3, §7
NEW section

CHAPTER 251

EMERGENCY RELIEF ADMINISTRATION

251.3 Powers and duties.

The administrator shall have the power to:

1. Appoint such personnel as may be necessary for the efficient discharge of the duties imposed upon the administrator in the administration of emergency relief, and to make such rules and regulations as the administrator deems necessary or advisable covering the administrator's activities and those of the service area advisory boards created under section 217.43, concerning emergency relief.

2. Join and cooperate with the government of the United States, or any of its appropriate agencies or instrumentalities, in any proper relief activity.

3. Make such reports of budget estimates to the governor and to the general assembly as are required by law, or are necessary and proper to obtain appropriations of funds necessary for relief purposes and for all the purposes of this chapter.

4. Determine the need for funds in the various counties of the state basing such determination upon the amount of money needed in the various counties to provide adequate relief, and upon the counties' financial inability to provide such relief from county funds. The administrator may administer said funds belonging to the state within the various counties of the state to supplement local funds as needed.

5. Make such reports, obtain and furnish such information from time to time as may be required by the governor, by the general assembly, or by any other proper office or agency, state or federal, and make an annual report of its activities.

2001 Acts, 2nd Ex, ch 4, §4, 9
2001 amendment is effective November 16, 2001; 2001 Acts, 2nd Ex, ch 4, §9
Subsection 1 amended

251.5 Duties of the service area advisory board.

A service area advisory board created in section 217.43 shall perform the following activities for any county in the board's service area concerning emergency relief:

1. Cooperate with a county's board of supervisors in all matters pertaining to administration of relief.
2. At the request of a county's board of supervisors, prepare requests for grants of state funds.
3. At the request of a county's board of supervi-

sors, administer county relief funds.

4. In a county receiving grants of state funds upon approval of the director of revenue and finance and the county's board of supervisors, administer both state and county relief funds.

5. Perform other duties as may be prescribed by the administrator and a county's board of supervisors.

2001 Acts, 2nd Ex, ch 4, §5, 9
2001 amendment is effective November 16, 2001; 2001 Acts, 2nd Ex, ch 4, §9
Unnumbered paragraph 1 amended

251.7 County appointees to act as executive officers.

The county board of supervisors may appoint an individual to serve as the executive officer of the service area advisory board in all matters pertaining to relief for that county.

2001 Acts, 2nd Ex, ch 4, §6, 9
2001 amendment is effective November 16, 2001; 2001 Acts, 2nd Ex, ch 4, §9
Section amended

CHAPTER 252

SUPPORT OF THE POOR

252.6 Enforcement of liability.

Upon the failure of such relatives to assist or maintain a poor person who has made application for assistance, the county board of supervisors, service area advisory board created under section 217.43, or state division of child and family services of the department of human services may ap-

ply to the district court of the county where the poor person resides or may be found for an order to compel the assistance or maintenance.

2001 Acts, 2nd Ex, ch 4, §7, 9
2001 amendment is effective November 16, 2001; 2001 Acts, 2nd Ex, ch 4, §9
Section amended

CHAPTER 261

COLLEGE STUDENT AID COMMISSION

261.17 Vocational-technical tuition grants.

1. A vocational-technical tuition grant may be awarded to any resident of Iowa who is admitted and in attendance as a full-time or part-time student in a vocational-technical or career option program at a community college in the state, and who establishes financial need.

2. All classes, including liberal arts classes, identified by the community college as required for completion of the student's vocational-technical or career option program shall be considered a part of the student's vocational-technical or career option program for the purpose of determining the student's eligibility for a grant. Notwithstanding subsection 3, if a student is making satisfactory academic progress but the student cannot complete a vocational-technical or career option pro-

gram in the time frame allowed for a student to receive a vocational-technical tuition grant as provided in subsection 3 because additional classes are required to complete the program, the student may continue to receive a vocational-technical tuition grant for not more than one additional enrollment period.

3. A qualified full-time student may receive vocational-technical tuition grants for not more than four semesters or the trimester or quarter equivalent of two full years of study. A qualified part-time student enrolled in a course of study including at least three semester hours but fewer than twelve semester hours or the trimester or quarter equivalent may receive vocational-technical tuition grants for not more than eight semesters or the trimester or quarter equivalent of two full years of full-time study.

However, if a student resumes study after at least a two-year absence, the student may again be eligible for the specified amount of time, except that the student shall not receive assistance for courses for which credit was previously received.

4. *a.* The amount of a vocational-technical tuition grant to a qualified full-time student shall not exceed the lesser of six hundred fifty dollars per year or the amount of the student's established financial need.

b. The amount of a vocational-technical 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 or the trimester or quarter equivalent shall be equal to the amount of a vocational-technical tuition grant that would be paid to a full-time student, except that the commission shall prorate the amount in a manner consistent with the federal Pell grant program proration.

5. A vocational-technical tuition grant shall be awarded on an annual basis, requiring reapplication by the student for each year. Payments under the grant shall be allocated equally among the semesters or quarters of the year upon certification by the institution that the student is in full-time or part-time attendance in a vocational-technical or career option program, as defined under rules of the department of education. If the student discontinues attendance before the end of any term after receiving payment of the grant, the entire amount of any refund due that student, up to the amount of any payments made under the annual grant, shall be paid by the institution to the state.

6. If a student receives financial aid under any

other program, the full amount of that financial aid shall be considered part of the student's financial resources available in determining the amount of the student's financial need for that period.

7. The commission shall administer this program and shall:

a. Provide application forms for distribution to students by Iowa high schools and community colleges.

b. Adopt rules for determining financial need, defining residence for the purposes of this section, processing and approving applications for grants and determining priority for grants.

c. Approve and award grants on an annual basis.

d. Make an annual report to the governor and general assembly.

8. Each applicant, in accordance with the rules established by the commission, shall:

a. Complete and file an application for a vocational-technical tuition grant.

b. Be responsible for the submission of the financial information required for evaluation of the applicant's need for a grant, on forms determined by the commission.

c. Report promptly to the commission any information requested.

d. Submit a new application and financial statement for re-evaluation of the applicant's eligibility to receive a second-year renewal of the grant.

2001 Acts, 2nd Ex, ch 6, §20, 37
2001 amendment is effective November 15, 2001; 2001 Acts, 2nd Ex, ch 6, §37
Subsection 7, paragraph e stricken

CHAPTER 331

COUNTY HOME RULE IMPLEMENTATION

331.321 See page 526.

CHAPTER 422

INCOME, SALES, SERVICES, AND FRANCHISE TAXES

422.7 See page 578.

422.35 See page 592.

CHAPTER 509A

GROUP INSURANCE FOR PUBLIC EMPLOYEES

509A.13 Continuation of group insurance.

If a governing body, a county board of supervi-

sors, or a city council has procured for its employees accident, health, or hospitalization insurance, or a medical service plan, or has contracted

with a health maintenance organization authorized to do business in this state, the governing body, county board of supervisors, or city council shall allow its employees who retired before attaining sixty-five years of age to continue participation in the group plan or under the group contract at the employee's own expense until the employee attains sixty-five years of age.

This section applies to employees who retired on or after January 1, 1981.

Continuation of coverage for early termination program participants; 2001 Acts, 2nd Ex, ch 5, §4, 8
Section not amended; footnote added

509A.13A Continuation of group insurance covering spouses.

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

a. "Eligible retired state employee" means a former employee of the government of the state of Iowa, including but not limited to any departments, agencies, boards, bureaus, or commissions of the state of Iowa, who is receiving the minimum level of retirement benefits for eligibility under this section and who is participating in a state health or medical group insurance plan which covers the former employee and the former employee's spouse at the time of the death of the former employee.

b. "Minimum level of retirement benefits for eligibility under this section" means any of the following:

(1) The eligible retired state employee has received retirement benefits under the retirement system established in chapter 97A based upon the completion of at least twenty-two years of membership service.

(2) The eligible retired state employee has received retirement benefits under the retirement system established in chapter 97B.

(3) The eligible retired state employee has received retirement benefits under the retirement system established in chapter 602, article 9.

c. "State health or medical group insurance plan" means a health or medical group insurance plan for employees of the state.

2. Notwithstanding any provision of law to the contrary, in the event of the death of an eligible retired state employee, the surviving spouse of the eligible retired state employee whose insurance would otherwise terminate because of the death of the eligible retired state employee may elect to continue to be a member of the state health or medical group insurance plan by requesting continuation in writing to the department of personnel within thirty-one days after the death of the eligible retired state employee. The surviving spouse shall pay the total premium for the state health or medical group insurance plan and shall have the same rights to change programs or coverage as state employees.

Continuation of coverage for early termination program participants; 2001 Acts, 2nd Ex, ch 5, §4, 8
Section not amended; footnote added

CHAPTER 524

BANKS

524.905 Loans on real property.

1. *Rules for loans.* A state bank may make permanent loans, construction loans, or combined construction and permanent loans, secured by liens on real property, as authorized by rules adopted by the superintendent under chapter 17A. The rules shall include provisions as necessary to ensure the safety and soundness of these loans, and to ensure full and fair disclosure to borrowers of the effects of provisions in agreements for these loans, including provisions permitting change or adjustment of any terms of a loan, provisions permitting, requiring, or prohibiting repayment of a loan on a basis other than of equal periodic installments of interest plus principal over a fixed term, provisions imposing penalties for the borrower's noncompliance with requirements of a loan agreement, or provisions allowing or requiring a borrower to choose from alternative courses of action at any time during the effectiveness of a loan agreement.

2. *Protective payments — escrow accounts.* A bank may include in the loan documents signed by

the borrower a provision requiring the borrower to pay the bank each month in addition to interest and principal under the note an amount equal to one-twelfth of the estimated annual real estate taxes, special assessments, hazard insurance premium, mortgage insurance premium, or any other payment agreed to by the borrower and the bank in order to better secure the loan. The bank shall be deemed to be acting in a fiduciary capacity with respect to these funds. A bank receiving funds in escrow pursuant to an escrow agreement executed on or after July 1, 1982 in connection with a loan as defined in section 535.8, subsection 1, shall pay interest to the borrower on those funds, calculated on a daily basis, at the rate the bank pays to depositors of funds in ordinary savings accounts. A bank which maintains an escrow account in connection with any loan authorized by this section, whether or not the mortgage has been assigned to a third person, shall each year deliver to the mortgagor a written annual accounting of all transactions made with respect to the loan and escrow account.

3. *Escrow reports.* A state bank may act as an escrow agent with respect to real property, and may receive funds and make disbursements from escrowed funds in that capacity. The state bank shall be deemed to be acting in a fiduciary capacity with respect to these funds. A bank which maintains such an escrow account, whether or not the mortgage has been assigned to a third person, shall deliver to the mortgagor a written summary of all transactions made with respect to the loan and escrow accounts during each calendar year. However, the mortgagor and mortgagee may, by mutual agreement, select a fiscal year reporting period other than the calendar year. The summary shall be delivered or mailed not later than thirty days following the year to which disclosure relates. The summary shall contain all of the following information:

- a. The name and address of the mortgagee.
- b. The name and address of the mortgagor.
- c. A summary of escrow account activity during the year as follows:

(1) The balance of the escrow account at the beginning of the year.

(2) The aggregate amount of deposits to the escrow account during the year.

(3) The aggregate amount of withdrawals from the escrow account for each of the following categories:

- (a) Payments against loan principal.

- (b) Payments against interest.
- (c) Payments against real estate taxes.
- (d) Payments for real property insurance premiums.

(e) All other withdrawals.

(4) The balance of the escrow account at the end of the year.

d. A summary of loan principal for the year as follows:

(1) The amount of principal outstanding at the beginning of the year.

(2) The aggregate amount of payments against principal during the year.

(3) The amount of principal outstanding at the end of the year.

4. *Marketability reports.* If the bank obtains a report or opinion by an attorney or from another mortgage lender relating to defects in or liens or encumbrances on the title of real property, the unmarketability of the title to real property, or the invalidity or unenforceability of liens or encumbrances upon real property, the bank shall provide a copy of the report or opinion to the mortgagor and the mortgagor's attorney.

Court action required for termination of installment contracts during military service; 2001 Acts, 2nd Ex, ch 1, §29, 31, 35, 36

Court action or parties agreement required for disposition of property under obligation secured by mortgage, trust deed, or other security during military service; 2001 Acts, 2nd Ex, ch 1, §29, 32, 35, 36

Section not amended; footnotes added

CHAPTER 669

STATE TORT CLAIMS

669.14 See page 976.

CODE EDITOR'S NOTES

Code Section

12.65

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.

511.4

2001 Acts, chapter 69, section 12, amends this section to eliminate a citation to reflect the repeal of section 515.122, effective July 1, 2001. 2001 Acts, chapter 16, section 8, amends the same portion of the statute by striking the cites to section 515.122 and to sections 515.123, 515.124, and 515.126, which are repealed, effective January 1, 2002. Because both Acts strike the same citation and 2001 Acts, chapter 16, section 8, strikes additional language, the changes made by chapter 16, section 8, were codified and a footnote added which notes that the provisions of sections 515.123, 515.124, and 515.126 remain applicable to life insurance companies and associations during the period from July 1, 2001, to January 1, 2002.

513B.14(1)

2001 Acts, chapter 125, section 1, amends the subsection effective July 1, 2001. 2001 Acts, chapter 69, section 38, repeals all of section 513B.14 effective January 1, 2002. The section was repealed as directed in the later enactment, but a footnote was added noting that the amendment to subsection 1 that is contained in 2001 Acts, chapter 125, section 1, was in effect from July 1, 2001, until January 1, 2002.



**CONVERSION TABLES OF SENATE AND HOUSE FILES
AND JOINT RESOLUTIONS TO
CHAPTERS OF THE ACTS OF THE GENERAL ASSEMBLY**

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	24	Notes applied		5	147A.2
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	8	507B.4A as amended by 2001 Acts-176-71		13	225B.7(2)
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	10	507B.7(1)		15	235C.2(8)
	11	507B.12		16	235C.3(2b)
	12	Superseded by 2001 Acts-16-8; note under 511.4		17	249A.4(8)
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	17, 18	Repealing		21	691.6A
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	30	515.51	80	1	627.6[8f(1)]
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120	1	717A.1			
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163.24	163.24, 163.61
163.25	163.25, 163.61
163.29	R 2001 Acts-136-10; see 163.61
163.31	R 2001 Acts-136-10; see 163.61(2b)
169A.12	R 2001 Acts-183-23; see 169A.13A
217.43(1)	217.43(1, 2)
217.43(2)	217.43(1)
217.43(4)	217.43(3)
222.2(3 - 7)	222.2(4 - 8)
229.14	229.14;
unb. par. 1	(1, unb. par. 1)
(1)	(1a)
(2)	(1b, 2a, b)
(3)	(1c, 2a, b, d)
(4)	(1, 2a - c)
229.14A	229.14B
230A.3(3)	Stricken 98 Acts-1181-5
231.53	R 2001 Acts-61-19
232.22(2 - 7)	232.22(3 - 8)
232.69[1b(2, 3)]	232.69[1b(1)]
232.69[1b(4 - 13)]	232.69[1b(2 - 11)]
232.69[1b(14)]	Stricken 2001 Acts-122-2
232.69[1b(15)]	232.69[1b(12)]
232.70(2 - 8)	232.70(3 - 9)
232.102(5, unb. par. 1)	232.102(5a, unb. par. 1)
232.102(5a, b)	232.102[5a(1, 2)]
232.104[2d(4)]	Stricken and substituted 2001 Acts-135-22
232.116(1c - m)	232.116(1d - n)
232.117(3A - 8)	232.117(4 - 9)
232.133(2)	232.133(1, 2)
232.147(4 - 10)	232.147(5 - 11)
232.182(7)	Stricken 99 Acts-111-4
235B.3(2b, c)	235B.3(2a)
235B.3(2d - f)	235B.3(2b - d)
235B.6[2e(7)]	Stricken 2001 Acts-20-5; see 235B.6[2b(2)]
235B.6[2e(8, 9)]	235B.6[2e(7, 8)]
239B.8(1a)	Stricken 2001 Acts-191-41
239B.8(1b - d)	239B.8(1a - c)
249A.3(2b - i)	249A.3(2c - j)
256.9(46)	Stricken 2001 Acts-181-12
256.9(47 - 50)	256.9(46 - 49)
256.40 - 256.43	R 2001 Acts-159-18
256.61	Stricken and substituted 2001 Acts-158-14;
(1 - 7)	see (1a - g)
256.62	R 2001 Acts-158-40;
(1)	see 256.61(2a)
(2)	see 256.61(2d)
256.63	R 2001 Acts-158-40
256.64	R 2001 Acts-158-40; see 256.61(4)
256.65	R 2001 Acts-158-40; see 256.61(5)
256.66(13)	256.66(14)
256.68(1a - c)	Stricken 2001 Acts-158-20
256C(Ch)	R 2001 Acts-181-26
256E(Ch)	R 2001 Acts-161-20; see ch 284;
256E.1(1)	see 284.2(1)

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256E.1(3)	see 284.2(2)
256E.1(4, 5)	see 284.2(4, 5)
256E.1(7)	see 284.2(7)
256E.2(1)	see 284.5(1)
257.3(3)	Stricken 2001 Acts-126-2
257.3(4)	257.3(3)
257.11(5-7)	257.11(6-8)
257.14(2)	Stricken and substituted 2001 Acts-126-10
258.7, 258.8	R 2001 Acts-159-18
260A.4	R 2001 Acts-189-17
260C.14(19)	Stricken 2001 Acts-39-1
260C.14(20)	260C.14(19)
261.9(1g)	Stricken 2001 Acts-39-2
261.17(7e)	Stricken 2001 Acts-2nd Ex-6-20
262.9(28)	Stricken 2001 Acts-39-3
262.9(29)	262.9(28)
279.16, unb. par. 8	279.16(8, unb. par. 1);
(1-7)	(8a-g)
279.24, unb. par. 15	279.24(6, unb. par. 1);
(1-7)	(6a-g)
280.12	280.12;
(1, unb. par. 1)	unb. par. 1, (2, unb. par. 1)
(1a)	(2a)
(1b-d)	(2c-e)
(1e)	Stricken 2001 Acts-159-13
(2)	(1)
280.18	R 2001 Acts-159-18; see 280.12
294A.25(6)	Stricken and substituted 2001 Acts-181-22
294A.25(10-12)	Stricken 2001 Acts-181-23
294A.25(13)	294A.25(10)
295(Ch)	R 295.5
307.31	R 2001 Acts-132-23; see 321.56
321.1(39)	321.1(36C)
321.20A(3)	Stricken 2001 Acts-132-2; see (1, 2)
321.24(1)	321.24(1, 3)
321.34[21c(1, 2)]	Stricken 2001 Acts-144-3; see 321.34(21c)
321.208(7-12)	321.208(8-13)
321.415, unb. par. 1	321.415(1, unb. par. 1)
321.415(1, 2)	321.415(1a, b)
321.415(3)	321.415(2)
321.440, unb. par. 1	321.440(1, unb. par. 1)
321.440(1-7)	321.440(1a-g)
321E.8(4)	Stricken 2001 Acts-32-27
322.2(21)	322.2(22)
322A.1(10)	322A.1(11)
322B.2	322B.2;
(1)	(12)
(2)	(1)
(3)	(7)
(4)	(6)
(5, 6)	(4, 5)
(7, 8)	(9, 10)
325A.1(1-6)	325A.1(2-7)
325A.1(7)	325A.1(9)
325A.1(9-13)	325A.1(10-14)
331.301[15b(1, 2)]	331.301[15b(2, 3)]
331.402(2e-h)	331.402(2f-i)
331.424A(6)	Stricken 2001 Acts-155-1
331.427(2n)	Stricken 2001 Acts-155-2
331.438(1a, unb. par. 2)	Stricken 2001 Acts-155-3
347.15	R 2001 Acts-65-2
364.3[8b(1, 2)]	364.3[8b(2, 3)]

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422.7(6)	Stricken 2001 Acts-127-4
422.42(9)	422.42(8)
422.47(2)	Stricken 2001 Acts-116-8
425.14	R 2001 Acts-154-5; see 425.7(3)
426B.5(2)	Stricken 2001 Acts-155-5
426B.5(3)	426B.5(2);
(3a - e)	(2b - f)
427A.1(4 - 7)	427A.1(5 - 8)
432.12	R 2001 Acts-69-38
435.1(4 - 6)	435.1(5 - 7)
437A.6(2, 3)	437A.6(4, 5)
452A.2(5 - 18)	452A.2(6 - 19)
452A.2(19 - 27)	452A.2(21 - 29)
452A.3(1)	452A.3(1, 1A)
452A.3(2a)	452A.3(2)
452A.3(2b)	Stricken 2001 Acts-123-4; see 452A.3(1)
455A.7(1g)	455A.7(1i)
455A.7(1h, i)	455A.7(1g, h)
455B.473(7)	Stricken 2001 Acts-51-1
455B.473(8, 9)	455B.473(7, 8)
455B.482(4 - 14)	455B.482(5 - 15)
455B.482(15)	455B.482(4)
466.7(4)	Stricken 2001 Acts-37-1; see 466.8
466.7(5 - 10)	466.7(4 - 9)
476.1A(6)	476.1A(7)
476.53	Stricken and substituted 2001 Acts-1st Ex-4-12
476A.6(4 - 6)	Stricken 2001 Acts-1st Ex-4-14
481A.38(3)	Stricken 2001 Acts-134-2
481A.38(4)	481A.38(3)
483A.1(2b - d)	483A.1(2c - e)
483A.1(2e - j)	483A.1(2g - "l")
483A.1(3)	Stricken 2001 Acts-148-3; see (1, 2);
(3a)	see (1"l", 2b)
(3b - e)	see (1m - p), (2m - p)
(3g, h)	see (1q, r), (2q, r)
483A.1A(4)	483A.1A(7)
490.140(4 - 26)	490.140(5 - 27)
499B.11(2)	Stricken 2001 Acts-116-26
499B.11(3)	499B.11(2)
502.203(18)	502.203(19)
502.207A(7a - d)	Stricken 2001 Acts-118-4
502.207B	R 2001 Acts-118-58
507A.4(7)	Stricken 2001 Acts-69-4
507A.4(8 - 10)	507A.4(7 - 9)
507B.4(10A)	507B.4(11)
507B.4(11, 12)	507B.4(13, 14)
512B.31	R 2001 Acts-16-36; see 522B.2, 522B.3
513B.4(1d, e)	Stricken 2001 Acts-69-14
513B.4(2)	Stricken 2001 Acts-69-15
513B.4(3 - 6)	513B.4(2 - 5)
513B.10(3)	Stricken 2001 Acts-69-17
513B.10(4 - 7)	513B.10(3 - 6)
513B.13(3c)	Stricken 2001 Acts-69-18
513B.13(3d, e)	513B.13(3c, d)
513B.13(4)	513B.13(4, 5)
513B.13(5)	Stricken 2001 Acts-69-20
513B.13(13)	Stricken 2001 Acts-69-22
513B.13(14, 15)	513B.13(13, 14)
513B.14	R 2001 Acts-69-38; see 513B.13(8a)
513B.16	R 2001 Acts-69-38
513B.17A	R 2001 Acts-69-38
513B.18	R 2001 Acts-69-38

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513B.31 – 513B.43	R 2001 Acts-69-38
513C.10(2 – 5) (2)	Stricken 2001 Acts-125-5; see 514E.2(2)
513C.10(6 – 14)	513C.10(2 – 10)
514J.4(1)	Stricken 2001 Acts-69-25; see 514J.3A
514J.4(2, 3)	514J.4(1, 2)
514J.7(1b)	514J.7(1b, 3)
514J.7(1c, d)	514J.7(4a, b)
514J.7(2 – 5)	514J.7(5 – 8)
515.122	R 2001 Acts-69-37
515.123, 515.124	R 2001 Acts-16-36
515.126	R 2001 Acts-16-36
522(Ch)	R 2001 Acts-16-36; see ch 522B;
522.1	see 522B.2
522.2	see 522B.6(1)
522.3	see 522B.3(2h, i), 522B.4(1), 522B.5(1e), 522B.10, 522B.11
522.4(1)	see 522B.5(1c), 522B.13
522.4(2)	see 522B.7(1b)
522.5	see 522B.17
523A(Ch)	R 2001 Acts-118-57; see ch 523A;
523A.1(1)	see 523A.201(2, 3, 6 – 8), 523A.404
523A.1(2)	see 523A.401(1 – 3)
523A.2(1a)	see 523A.201(1), 523A.202(1)
523A.2(1c)	see 523A.204(1, 4, 5, 7);
[1c(1)]	see (1a)
[1c(2)]	see (1b, c)
[1c(3 – 5)]	see (1d – f)
[1c(6)]	see (1i)
523A.2(1d)	see 523A.205(1, 2)
523A.2(1e)	see 523A.204(8), 523A.205(3)
523A.2(1f)	see 523A.203(6)
523A.2(1g)	see 523A.202(2, 3), 523A.203(1, 3 – 5);
[1g(1 – 4)]	see 523A.202(2a – d)
523A.2(2, 3)	see 523A.204(6, 7)
523A.2(5)	see 523A.206(1, 2)
523A.2(6)	see 523A.701, 523A.703
523A.2(7)	see 523A.401(1, 7)
523A.3(1a)	see 523A.102(4)
523A.3(1b)	see 523A.301
523A.3(1c)	see 523A.102(18)
523A.3(1d)	see 523A.102(23)
523A.3(2 – 8)	see 523A.303
523A.5(1)	see 523A.802
523A.5(2a)	see 523A.102(6)
523A.5(b – d)	see 523A.102(13 – 15)
523A.7	see 523A.405(1 – 7)
523A.8	see 523A.601;
(1a – e)	see (1a – e)
(1f)	see (1f, g), (2d, f)
(1g, h)	see (2a, b)
(1i, j)	see (1h, i)
(1k)	see (2c)
(2, 3)	see (3, 4)
(4a – g)	see (5a – g)
523A.9(1)	see 523A.501(1)
523A.9(2)	see 523A.501(2 – 4);
(2a – c)	see (3a – c)
(2d)	see (3e)
523A.9(3)	see 523A.501(2)
523A.9(4)	see 523A.501(5)
523A.9(5)	see 523A.503(1);
(5a)	see (1c)

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(5b)	see (1a)
(5c, d)	see (1f, g)
523A.9(6)	see 523A.501(6)
523A.10(1, 2)	see 523A.502(1, 2)
523A.10(3)	see 523A.502(3, 4, 6);
(3a)	see (4a)
(3b)	see (4b, c)
523A.10(4)	see 523A.502(5)
523A.10(5)	see 523A.502(3, 5)
523A.10(6)	see 523A.502(7)
523A.10(7)	see 523A.503(1f, g)
523A.11	see 523A.803(1);
(1)	see (1d)
(2)	see (1c)
(3, 4)	see (1e, f)
523A.12	see 523A.503;
(1a)	see (1a, b)
(1c – e)	see (1c – e)
(1f)	see (1h)
(2)	see (2, 3)
(3, 4)	see (3, 4)
523A.13	see 523A.807(2)
523A.14	see 523A.805(2)
523A.15	see 523A.703
523A.16	see 523A.809(1)
523A.17	see 523A.805(1)
523A.18	see 523A.807(1)
523A.19	see 523A.811;
(1a)	see (1a)
(1b)	see (1b, c)
(1c, d)	see (1d, e)
(2)	see (2)
523A.20	see 523A.812
523A.21	see 523A.813
523A.22	see 523A.901
523E(Ch)	R 2001 Acts-118-57; see ch 523A;
523E.1(1)	see 523A.201(2, 6, 7)
523E.1(3)	see 523A.201(8)
523E.1(4)	see 523A.201(3)
523E.1(5)	see 523A.401(1 – 3)
523E.1(6)	see 523A.404
523E.2(1a)	see 523A.201(1), 523A.202(1)
523E.2(1c)	see 523A.204(1, 4, 5, 7);
[1c(1)]	see (1a)
[1c(2)]	see (1b, c)
[1c(3 – 5)]	see (1d – f)
[1c(6)]	see (1i)
523E.2(1d)	see 523A.205(1, 2)
523E.2(1e)	see 523A.204(8), 523A.205(3)
523E.2(1f)	see 523A.203(6)
523E.2(1g)	see 523A.202(2, 3), 523A.203(1, 3 – 5);
[1g(1 – 4)]	see 523A.202(2a – d)
523E.2(2, 3)	see 523A.204(6, 7)
523E.2(5)	see 523A.206(1, 2)
523E.2(6)	see 523A.401(1, 7)
523E.5(1)	see 523A.802
523E.5(2a, b)	see 523A.102(5, 6)
523E.7	see 523A.405(1 – 7)
523E.8	see 523A.601;
(1a – e)	see (1a – e)
(1f)	see (1f, g), (2d, f)
(1g, h)	see (2a, b)

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(1i, j)	see (1h, i)
(1k)	see (2c)
(2, 3)	see (3, 4)
(4a – g)	see (5a – g)
523E.9(1)	see 523A.501(1)
523E.9(2)	see 523A.501(2 – 4);
(2a – c)	see (3a – c)
(2d)	see (3e)
523E.9(3)	see 523A.501(2)
523E.9(4)	see 523A.501(5)
523E.9(5)	see 523A.503(1);
(5a)	see (1c)
(5b)	see (1a)
(5c, d)	see (1f, g)
523E.9(6)	see 523A.501(6)
523E.10(1)	see 523A.502(1)
523E.10(2)	see 523A.502(3, 4, 6);
(2a)	see (4a)
(2b)	see (4b, c)
523E.10(3)	see 523A.502(5)
523E.10(4)	see 523A.502(3, 5)
523E.10(5)	see 523A.502(7)
523E.10(6)	see 523A.503(1f, g)
523E.11	see 523A.803(1);
(1)	see (1d)
(2)	see (1c)
(3, 4)	see (1e, f)
523E.12	see 523A.503;
(1a)	see (1a, b)
(1c – e)	see (1c – e)
(1f)	see (1h)
(2)	see (2, 3)
(3, 4)	see (4, 5)
523E.13	see 523A.807(2)
523E.14	see 523A.805(2)
523E.15	see 523A.703
523E.16	see 523A.809(1)
523E.17	see 523A.805(1)
523E.18	see 523A.807(1)
523E.19	see 523A.811;
(1a)	see (1a)
(1b)	see (1b, c)
(1c, d)	see (1d, e)
(2)	see (2)
523E.20	see 523A.812
523E.21	see 523A.813
523F(Ch)	R 2001 Acts-16-36
524.1213(9 – 12)	524.1213(10 – 13)
554.2210(3 – 5)	554.2210(4 – 6)
554.2326(3)	Stricken 2000 Acts-1149-142; see 554.9311(4)
554.2326(4)	554.2326(3)
554.2502(2)	554.2502(3)
554.8110(5a)	554.8110(5a, b)
554.8110(5b – d)	554.8110(5c – e)
554.8510(3)	554.8510(3, 4)
554.9101	R 2000 Acts-1149-185; see 554.9101
554.9102	R 2000 Acts-1149-185; see 554.9109;
(1)	see (1)
(2)	see (1, 4b)
(3)	see (2)
554.9103	R 2000 Acts-1149-185;
(1a, b)	see 554.9301(1 – 3)

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(1d)	see 554.9316(1 - 3)
(2a, b)	see 554.9303
(2c)	see 554.9316(4, 5)
(2d)	see 554.9337
(3a, b)	see 554.9301(1)
(3d)	see 554.9307
(3e)	see 554.9316(1, 2)
(4)	see 554.9301(1 - 3)
(5)	see 554.9301(4)
(6)	see 554.9305;
(6b - d)	see (1a - c)
(6e)	see (1d, 2)
(6f)	see (3)
554.9104	R 2000 Acts-1149-185; see 554.9109;
(a)	see (3a)
(b - d)	see (4a - c)
(f)	see (4d - g)
(g - "I")	see (4h - m)
(m)	see (3d)
554.9105	R 2000 Acts-1149-185; see 554.9102;
(1)	see (1);
(1a)	see (1c)
(1b, c)	see (1k, "I")
(1d - f)	see (1ab, ac, ad)
(1g)	see (1af)
(1h)	see (1ar)
(1i)	see (1au)
(1j)	see (1bc)
(1k)	see (1bp)
(1"l")	see (1bu)
(1m)	see (1bt)
(1n)	see (1cb)
(2 - 4)	see (1 - 3)
554.9106	R 2000 Acts-1149-185; see 554.9102(1b, ap)
554.9107	R 2000 Acts-1149-185; see 554.9103
554.9108	R 2000 Acts-1149-185; see 554.9204
554.9109	R 2000 Acts-1149-185; see 554.9102;
(1)	see (1w)
(2, 3)	see (1ag, ah)
(4)	see (1av)
554.9110	R 2000 Acts-1149-185; see 554.9108
554.9112	R 2000 Acts-1149-185; see 554.9102(1ab)
554.9113	R 2000 Acts-1149-185; see 554.9110
554.9114	R 2000 Acts-1149-185; see 554.9103(4), 554.9324
554.9115	R 2000 Acts-1149-185;
(1a - d)	see 554.9102(1n - q)
(1e)	see 554.9106
(1f)	see 554.9102(1aw)
(2)	see 554.9203(8, 9), 554.9308(6, 7)
(3)	see 554.9108
(4a)	see 554.9314
(4b)	see 554.9312(1)
(4c, d)	see 554.9309(10, 11), 554.9310(2b)
(5)	see 554.9328
(6)	see 554.9203(2), 554.9313(1)
554.9116	R 2000 Acts-1149-185; see 554.9206; 554.9309(9)
554.9201	R 2000 Acts-1149-185; see 554.9201(1, 4)
554.9202	R 2000 Acts-1149-185; see 554.9202
554.9203	R 2000 Acts-1149-185;
(1)	see 554.9203(2)
(2)	see 554.9203(1)
(3)	see 554.9203(6)

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(4)	see 554.9201(2, 3)
554.9204	R 2000 Acts-1149-185; see 554.9204
554.9205	R 2000 Acts-1149-185; see 554.9205
554.9206	R 2000 Acts-1149-185; see 554.9403(2, 3, 6)
554.9207	R 2000 Acts-1149-185; see 554.9207;
(1)	see (1)
(2a, b)	see (2a, b)
(2c)	see (3a, b)
(2d)	see (2c)
(2e)	see (3c)
(4)	see (2d)
554.9208	R 2000 Acts-1149-185; see 554.9210
554.9301	R 2000 Acts-1149-185;
(1a, b)	see 554.9317(1)
(1c)	see 554.9317(2)
(1d)	see 554.9317(4)
(2)	see 554.9317(5)
(3)	see 554.9102(1az)
(4)	see 554.9323(2)
554.9302	R 2000 Acts-1149-185;
(1a)	see 554.9310(1f)
(1b)	see 554.9310(1d, e)
(1c)	see 554.9309(13), 554.9310(2b)
(1d)	see 554.9309(1), 554.9310(2b)
(1e)	see 554.9309(2), 554.9310(2b)
(1f)	see 554.9309(7), 554.9310(2b)
(1g)	see 554.9309(12), 554.9310(2b)
(1h)	see 554.9309(10), 554.9310(2b)
(2)	see 554.9310(3)
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